

E3o0liu1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

12 CR 934 (RA)

6 FENG LING LIU,
7 VANESSA BANDRICH,
8 and RUI YANG,

9 Defendants.

10 -----x

New York, N.Y.
March 24, 2014
10:00 a.m.

11 Before:

12 HON. RONNIE ABRAMS,

13 District Judge
14 and a jury

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
18 Southern District of New York

19 ROBERT L. BOONE

20 PATRICK EGAN

21 REBECCA G. MERMELSTEIN

22 Assistant United States Attorneys

23 RONALD P. FISCHETTI

24 PHYLLIS A. MALGIERI

25 ERIC FRANZ

ALEX KOVACS

MARYAM JAHEDI

Attorneys for Defendant Liu

SEAN M. MAHER

Attorney for Defendant Bandrich

STANISLAO A. GERMAN

JASON RICHLAND

Attorneys for Defendant Yang

ALSO PRESENT: JOHN LAU

JEAN YAP, Interpreters (Mandarin)

E3o01iul

(Trial resumed)

THE COURT: Please be seated. We're still waiting for a few jurors.

Do defense counsel waive their client's presence at all sidebars?

MR. FISCHETTI: Yes, the waiver is in effect, unless one of the attorneys says they wish to have that. I have other clients there.

MR. MAHER: I join in that.

THE CLERK: Yes.

THE COURT: Thank you.

MR. MAHER: Can I ask an administrative question?

THE COURT: Yes, of course.

MR. MAHER: As far as when we are using exhibits with the witnesses, I think while almost everything here is electronic, will it be sufficient if we ask the court deputy to display it to the witness and counsel, as far as showing it to the witness without having a hard copy?

THE COURT: Sure, that's fine. Just make sure that it doesn't go up on the screen before it is admitted into evidence, because the jurors have the screens, as well.

MR. MAHER: I believe that courtroom deputy actually has to hit a button before it goes to the jury.

THE COURT: And you have discussed this with her?

MR. MAHER: I have discussed it.

E3o01iul

1 THE COURT: Okay, that's fine.

2 As I noted earlier, you don't need to ask to approach
3 or anything of that sort.

4 MR. MAHER: Okay.

5 THE COURT: It's my understanding that no one is using
6 any demonstratives in their openings?

7 MR. EAGAN: Yes.

8 MR. MAHER: Yes.

9 MR. FISCHETTI: Yes.

10 MR. GERMAN: Yes.

11 We're still waiting for one juror.

12 Do you want to tell me the order of opening
13 statements, who intends to go first, second, third.

14 Mr. Fischetti, second? Mr. Maher and Mr. German.

15 Mr. Egan, you'll be doing the opening statement for
16 the government, is that correct?

17 MR. EGAN: That's correct, your Honor.

18 THE DEPUTY CLERK: All rise.

19

20

21

22

23

24

25

E3o0liu1

(In open court)

(Jury present)

THE COURT: Good morning, everyone.

THE JURORS: Good morning.

THE COURT: I hope you had a nice weekend. You may be seated.

I'm just going to ask you, once again, please try to get in at 9:30. If one person is late, then everybody has to wait, so I'm going to ask you again just going forward please try and come promptly.

I'm going to have Ms. Cavale swear in the jury.

THE DEPUTY CLERK: Jurors rise and raise your right hands.

(Panel sworn)

THE DEPUTY CLERK: Thank you, you may be seated.

THE COURT: Now, we're going to hear opening statements. As I mentioned on Thursday, opening statements are not evidence nor argument, but I'm still going to ask you to play close tension.

Mr. Egan.

MR. EGAN: This is a case about lies, plain and simple. Lies told by these three defendants and their co-workers at two immigration law firms not far from this courtroom down in Chinatown. Lies aimed at cheating this country's immigration system, and making literally millions of

e3o0liu1

Eagan - Opening

1 dollars doing it.

2 The firms where these defendants worked were in the
3 business of filing fraudulent applications for asylum. And
4 they filed hundreds and hundreds and hundreds of them over the
5 course of this fraud.

6 These applications contained stories of religious
7 persecution, forced abortions, savage beatings at the hands of
8 the Chinese government. They provided details of unjust
9 arrests, prolonged detentions under unspeakable conditions.
10 They were detailed. They were powerful. They were often very
11 moving.

12 They were also fake. Made up. All of those details
13 from the number of kicks the victim received to descriptions of
14 day after day after day in a dark prison cell, all of it came
15 from the imaginations of these defendants.

16 Feng Ling Liu, was the head lawyer at one of these law
17 firms. And you'll hear that she helped the applicants come up
18 with fake stories, and helped them gather fake evidence drawing
19 on her experience in the industry.

20 Vanessa Bandrich, opened up a spin-off firm with Feng
21 Ling Liu's brother, so that the fraud could continue without
22 drawing as much attention to Feng Ling Liu' firm.

23 THE COURT: Stand near the microphone. It is a little
24 hard to hear.

25 MR. EGAN: And Rachel Yang, she worked at Bandrich's

e3o0liu1

Eagan - Opening

1 firm. And you'll hear how she guided the applicants through
2 the process, helping them gather fake evidence to support their
3 claims.

4 They, along with their clients, taught these
5 applicants not only how to lie, but what lies to tell in their
6 applications, in their appearances in front of the asylum
7 officers, and even in front of the immigration judge.

8 And all of these lies were aimed at one very specific
9 goal, exploiting the best intentions of the asylum process to
10 get their clients applications approved. Because these
11 defendants, ladies and gentlemen, a successful application
12 meant literally thousands of dollars in their pockets.

13 As I said, it was a business, a big business. And one
14 they were very good at.

15 Now, you're going to hear a lot about asylum over the
16 course of this trial, so I want to take a moment to describe
17 what it is and how it works.

18 As some of you may know, asylum is an immigration
19 benefit offered to people in the United States, to citizens
20 from a foreign country who can demonstrate that they were
21 persecuted in their home country on account of things like race
22 or religion or political beliefs. It is an important tool to
23 protect people who are legitimately persecuted.

24 Now, when someone is granted asylum in the United
25 States, they are given a document, a card really, that allows

e3o0liu1

Eagan - Opening

1 them to remain in this country indefinitely.

2 People who are granted asylum can bring family members
3 over and, with time, can apply for a green card, or even apply
4 for U.S. citizenship. So it is a very powerful immigration
5 benefit.

6 The process for applying for asylum is pretty simple.
7 It is a two-step process. The applicant has to fill out a form
8 with some personal biographical details and provide a personal
9 statement that describes how the they were persecuted.

10 (Continued on next page)

E3oWliu2

Opening - Mr. Egan

1 MR. EGAN: They then send that, along with any
2 evidence that corroborates their claim, into the asylum.
3 That's step one. Step two is an interview in front of an
4 asylum officer who tries to determine if the case meets the
5 legal standard for asylum and, most importantly, if it's true.
6 If the asylum officer denies the application, the applicant can
7 appeal to an immigration judge. That's basically the process.

8 Ladies and gentlemen, the evidence will show that
9 these defendants manipulated that process at every single step
10 along the way, from creating fake stories of persecution to
11 manufacturing evidence, all the way through coached testimony
12 in front of an immigration judge. The evidence will show that
13 under the guise of law firms helping asylum applicants navigate
14 this process, these defendants were essentially running nothing
15 more than a fraud factory, churning out false application after
16 false application, and each of these defendants had their place
17 along the assembly line, helping to turn any hopeful Chinese
18 immigrant or aspiring asylum seeker into a persecuted or
19 oppressed refugee worthy of protection.

20 So how did it work? You'll hear that there are a
21 couple of categories of persecution that these firms
22 specialized in. First of all, persecution based on
23 Christianity; second of all, persecution based on falun gong,
24 which you'll hear is a spiritual discipline practiced by some
25 people in China, and, finally, based on China's family-planning

E3oWliu2

Opening - Mr. Egan

1 policy which regulates who can have children and when.

2 The evidence will show that applicants first met with
3 an office manager, sometimes even Feng Ling Liu herself. These
4 managers would get information from the applicants such as
5 name, date of birth, place of birth, the basics. Then one of
6 these managers would just choose one of these categories for
7 them. Now, you'll hear that the office manager didn't ask if
8 the applicant had a valid basis for asylum, didn't ask about
9 the applicant's experiences or beliefs in China, didn't ask for
10 any of that information, but the manager just told them, Here,
11 this is how you were persecuted, trust me.

12 For instance, you're going to hear that if an
13 immigrant was young, female, and unmarried, a family-planning
14 claim might be the best option. If the person was highly
15 educated, maybe Christianity would work because it has lot of
16 very specific details to remember. If, however, the client was
17 not as educated, maybe falun gong would be the best option as
18 that didn't have quite as many details to remember. Not
19 planning on having kids, didn't matter. Not a practicing
20 Christian, didn't matter. Don't know the first thing about
21 falun gong, did not matter. The only thing that mattered to
22 these defendants was what was likely to be successful because,
23 as I said, when applications were successful, the defendants
24 got paid.

25 After the applicant was told what persecution they had

E3oWliu2

Opening - Mr. Egan

1 suffered, the next stop was the storywriters. Now, as the name
2 suggests, that's what these people did. They wrote stories,
3 fake stories, to put the meat on the bones, so to speak, of the
4 claim the person had been assigned. Now, if the manager came
5 to them and said family planning, they wrote a story about a
6 young couple on the run from family-planning authorities. If
7 the folder came to them and it said Christianity, they might
8 write about underground churches and police raids. All of the
9 things you will hear were well tested formulas, and you'll hear
10 that, for the most part, these storywriters wrote these stories
11 without actually talking to the applicant. After all, these
12 writers had much more experience with these stories than the
13 applicants did.

14 When it was decided that the storywriters should
15 actually let the applicants write their stories first, you
16 know, in case someone started looking or someone got
17 suspicious, the storywriters simply handed the applicants
18 samples that had been successful in the past for them to modify
19 and copy. The firms even helped the applicants get fraudulent
20 evidence.

21 Now, you may ask, how do you get evidence for a story
22 that never happened? It's easy. You make it up. People at
23 these firms, people like Rachel Yang, told the applicants what
24 kind of fake evidence they would need, and the storywriters
25 went to work writing. They wrote letters that were supposed to

E3oWliu2

Opening - Mr. Egan

1 be from friends, family members, maybe even a boyfriend who had
2 gotten the person pregnant, just restating the lies they put in
3 the story but, this time, over someone's name just to make the
4 story seem legitimate. All the applicant had to do was send
5 that letter back to China for a friend to recopy it and send it
6 back in an envelope with a Chinese postmark. You'll even hear,
7 however, that these firms kept a supply of Chinese-sized paper
8 in the firm in case there was an emergency and someone needed
9 to have a friend here in the United States write a letter
10 pretending to be in China.

11 After these stories and the evidence letter were
12 written, they would be reviewed by Feng Ling Liu or one of the
13 other lawyers at the firm. She had to make sure they were good
14 enough. If the beating that was discussed in the story was not
15 severe enough, maybe she'd add a couple extra details, a couple
16 extra kicks, a black eye, a broken bone. Maybe the length of
17 time that the story said the applicant had been in detention
18 wasn't quite long enough, so seven days became two weeks,
19 whatever it took, whatever little extra details they felt they
20 needed to push the story over the edge. Then the defendants
21 submitted everything to the asylum office and started preparing
22 applicants for the next step, teaching the applicants to lie
23 and lie convincingly, both in their interviews and, if
24 necessary, in front of the immigration judge. Coaches drilled
25 them on their stories and other things that they might be

E3oWliu2

Opening - Mr. Egan

1 expected to know if they had actually been persecuted. The
2 firm even prepared a cheat sheet designed to turn someone who
3 knew nothing about Christianity into someone who could pass for
4 a devoted believer in one of these interviews, sort of like
5 CliffsNotes for religion. Except just like CliffsNotes, it
6 wasn't designed to get you to really learn the material; it was
7 just designed to get you to pass the test. If the applicant
8 failed the interview, however, they prepared even more
9 rigorously for the appearance in front of the immigration
10 judge. Multiple rounds of prep, two, three rounds, this time,
11 with lawyers, lawyers like Feng Ling Liu, lawyers like Vanessa
12 Bandrich, again, drilling the applicants on their stories.

13 So it went application after application, lie after
14 lie. As I said, a factory for fraudulent asylum applications.
15 And an efficient one at that. You'll hear that the
16 storywriters often had caseloads as high as 50 cases at a time.
17 And you will hear that the firms run by Feng Ling Liu and
18 Vanessa Bandrich filed close to 2,000 of these applications
19 during the course of the fraud, and you'll hear that almost
20 every one of them contained lies. Whatever it took to get the
21 application approved, and that's, as I said, what mattered most
22 to these defendants, because if it got approved, they got paid.
23 At least \$10,000 for each applicant who was granted asylum. As
24 I said, hundreds and hundreds and hundreds of applications, a
25 big business, ladies and gentlemen, literally millions of

E3oWliu2

Opening - Mr. Egan

1 dollars over the course of the fraud, all for helping
2 immigrants file a form that doesn't cost a dime to file.

3 They were so successful, as a matter of fact, that you
4 will hear that they started to worry that people might get
5 curious, people like the FBI. After all, if the government was
6 going to investigate this, they were likely going to start with
7 the biggest players. You'll hear that as word trickled out
8 about law firms around the country who had been arrested for
9 precisely this sort of fraud, the defendants kicked into
10 action. Feng Ling Liu tried to cover her tracks. She warned
11 employees, don't talk on the phone, in case they're tapped.
12 You'll hear she said not to have clients bring any of the
13 materials outside of the firm. She then went and changed the
14 firm name. Feng Ling Liu's name came off the door. You'll
15 hear Troy Moslemi's name went right back up. Then Feng Ling
16 Liu helped her brother open another firm right across the
17 street, this time with Vanessa Bandrich's name on the door.
18 And they brought on Rachel Yang to help the applicants through
19 the fraudulent process. And while they pretended to be
20 separate firms, you'll hear, the evidence will show, that in
21 many ways it remained one firm. Same business, same factory,
22 same fraud. That's what the evidence will show.

23 Let's talk about the kinds of evidence you'll see and
24 hear in this case. First you're going to hear live testimony
25 from a number of witnesses. You're going to hear from a couple

E3oWliu2

Opening - Mr. Egan

1 of storywriters who worked at this firm. As people who did
2 this for a living, they'll be able to tell you exactly how the
3 fraud worked at these firms and the roles of each of the
4 participants in the fraud. You'll also hear from an asylum
5 applicant who actually used the firm to file a fraudulent
6 asylum application. He'll describe how they moved him through
7 the process, how they helped him gather fraudulent evidence,
8 how they helped create a fake story for him.

9 You'll also see a couple different types of
10 documentary evidence at the trial. First, you'll see some
11 examples of the fraudulent applications that were filed by the
12 firm, and you'll hear the lies that they contain and you'll
13 hear how the firms manufactured them. Then you'll see evidence
14 that was taken right off the desks and out of the drawers of
15 these firms and you'll hear how that evidence was used to
16 manufacture false asylum claims.

17 But you won't just hear witnesses' descriptions of how
18 it worked or see documents that they used to corroborate what
19 they said. You will hear the actual words of the defendants
20 themselves as they guided applicants through this process. You
21 see, several of the witnesses you will hear from, including two
22 of the witnesses who went to these firms to file applications,
23 were working for the FBI. As part of that cooperation, they
24 agreed to wear recording devices that captured each of these
25 defendants discussing the fraud. You'll see translations of

E3oWliu2

Opening - Mr. Egan

1 these recordings, and you'll hear how the applicants were given
2 asylum claims, coached to be more believable, and how they were
3 taught to get fraudulent evidence. In short, how to lie.
4 These recordings will make it clear that everyone at these
5 firms knew exactly how this game was played.

6 To be clear, many of the witnesses I just described
7 committed a crime. The applicants submitted applications with
8 lies in them. The storywriters will testify that they prepared
9 false asylum applications for people. That's asylum fraud in
10 both cases. Now, the government has agreed not to prosecute
11 the applicants who will testify at this trial for immigration
12 fraud. The storywriters, on the other hand, have already pled
13 guilty for their involvement in the scheme and are testifying
14 here in hopes of getting leniency at their sentencing. When
15 you consider their testimony, you should also consider how that
16 testimony is corroborated by other evidence in the case, by
17 documents and by the recordings. You will see that these
18 witnesses are able to take you inside this process like no
19 other witness can. In short, you will hear and see many
20 different kinds of evidence in this trial, and that will
21 confirm that the defendants are guilty of conspiracy to commit
22 immigration fraud as charged in the indictment.

23 Once you've heard all the evidence in this case and
24 used your common sense, the same common sense that you use in
25 your everyday lives as New Yorkers, you will reach the only

E3oWliu2

Opening - Mr. Fischetti

1 conclusion, the only verdict, that is supported by that
2 evidence, and that's that the defendants are guilty.

3 Thank you.

4 THE COURT: Thank you.

5 Mr. Fischetti.

6 MR. FISCHETTI: Yes, your Honor. Thank you.

7 Good morning, everybody. I get to talk to you now.
8 Let me reintroduce myself. I'm Ron Fischetti. I'm an
9 attorney, and I represent a client. My client is here,
10 Ms. Feng Ling Liu, and I've got some notes, but I want to talk
11 to you a little bit about what the government said also.

12 This is a criminal case, as you know, and my client,
13 as you know, is presumed innocent. They've told you that, the
14 judge has told you that, and it's very important. See, here in
15 America, in the United States, we have a system of justice, and
16 it is a fair one. As fair as it possibly can be. And one of
17 the things that is really important in our system of justice is
18 that every person is presumed innocent when they're charged.
19 Right now, so while you're looking at my client, she is
20 presumed innocent and even after you heard this opening by the
21 government, there's no evidence against her whatsoever. And
22 that presumption of innocence is going to stay with her
23 throughout this entire trial, and even when you walk in to that
24 jury room to decide her fate, she still will be presumed
25 innocent and presumed innocent through that entire process

E3oWliu2

Opening - Mr. Fischetti

1 unless and until each and every one of you is convinced that
2 the government has proved her guilt beyond a reasonable doubt.

3 I'm not going to describe what those words mean. The
4 judge will tell you when she charges you. But one thing you
5 must know, how does that happen, well, it happens this way.
6 There's a burden of proof. The government must prove to each
7 and every one of you that my client is guilty beyond a
8 reasonable doubt. Now, that's important because that burden
9 rests at this table. It never leaves that table. It never
10 shifts to my client whatsoever. We need do nothing. We need
11 not present any evidence. We need not even have to give this
12 opening statement. I could just sit there and say you brought
13 these charges, now prove them beyond a reasonable doubt, and
14 that's very, very important for you to remember.

15 One of the other things you must remember is whether
16 or not my client will testify in this case. Now, remember you
17 were given those booklets before we selected you, and there was
18 a question on that that said would you feel a little bit like
19 my client was guilty because she did not testify, and each of
20 you swore an oath. The oath said that you would not consider
21 that. You would not consider it at all, not even a little bit,
22 if she did not testify. That will be a decision that we'll
23 make at the end of the government's case, to decide whether she
24 will or not. But if she doesn't, you can't say, Well, you
25 know, if it were me and I were sitting over there and somebody

E3oWliu2

Opening - Mr. Fischetti

1 charged me with those crimes, you can bet your bottom dollar
2 I'd get on that stand and say it's a lie, I never did it. But
3 you can't do that. You swore an oath that you can't do that,
4 and, quite frankly, I'm going to hold you to it.

5 Now, she's been charged with an indictment. Okay? A
6 piece of paper comes in, it says the United States of America
7 against Feng Ling Liu. But that's not evidence. It's nothing
8 more than a piece of paper. It just accuses her of this, so
9 you can't consider that as evidence at all. And it says very
10 officially, the United States of America. Well, the United
11 States of America is not against my client. I'm part of the
12 United States of America, so are you. It's just a method of
13 pleading. And when you weren't here on another day, she stood
14 up before this judge and said I am not guilty of these charges.
15 And that's why we're here, for you to see if you can follow the
16 evidence that way.

17 So what is this case really about? Well, my client's
18 a lawyer. She's married. She has two children, one in high
19 school, one in Harvard, and she formed a law firm here. Now,
20 you know about this case that many people try to come here into
21 the United States. You know, it's where a person like probably
22 your ancestors and certainly mine can come and find a new life
23 for their family. And not surprisingly, in some countries,
24 like China, they'll do anything they can to get in here, so
25 they do it illegally, get smuggled in. They pay people that

E3oWliu2

Opening - Mr. Fischetti

1 are called snakeheads, I think -- I don't know what the word
2 is -- to smuggle them in here because of the persecution there.

3 I'm going to talk about that a little bit now. I
4 really wasn't going to, but when the government says fake, fake
5 prosecutions, fake, that people from China say fake, that
6 there's dark prison cells there, it's a fake, that's a lie.
7 There's persecution there. Horrible persecution. People are
8 beaten. People are put in prison for their religious beliefs.
9 People are put in prison for their political beliefs. You
10 can't talk over there. There's no freedom of speech, no
11 freedom of religion. And people would do anything to get out
12 of there, to get here. And that's why we, in this great
13 country, have provided a way that once they're here, no matter
14 how they got here, if they were smuggled in, if they came on a
15 visa and overstayed it, no matter how they got here, we provide
16 a method so that they don't have to go back. And if they do go
17 back, ladies and gentlemen, they're tortured, they're put in
18 prison, because they fled their country. That's what we do
19 here and I think it's a very, very fair thing to do.

20 Now, my client was involved in that. As I told you,
21 she's a lawyer. She has a firm. She was here for ten years
22 working in this firm, but the interesting thing is that at 27,
23 she left China and she left China because of the oppression.
24 She left China because of the persecution, and she came here
25 and she started a firm that you've heard about. That firm was

E3oWliu2

Opening - Mr. Fischetti

1 to help Chinese people who were persecuted stay here in the
2 United States. They formed that firm not only to make money
3 for her husband and her two daughters, one at Harvard, she did
4 it because she wanted to help. She did it because she wanted
5 to help those people who were persecuted in China not have to
6 go back there. And that's what she did for ten years. And
7 after ten years, after working very hard, she decided that she
8 was going to leave the firm, maybe do a little insurance
9 business on the side, but she was out of it. She went there
10 and she needed somebody to take it over, and that somebody that
11 she found, I think you heard the name, was Troy Moslemi.

12 Troy Moslemi is a lawyer, immigration lawyer, and she
13 spoke to him. She knew him. He had experience, he was
14 well-known, and she turned the firm over to him and it became
15 the Moslemi firm. She kept her hand in, it wasn't that she was
16 just walking out, because she had a number of clients that were
17 still pending. And indeed because of the work that she did,
18 the good work that she did, helping these people who were
19 persecuted, she got calls from China, from family members,
20 where she helped one person to get another person in. So to
21 that extent, she was there. It wasn't her firm anymore, it was
22 Moslemi's firm. And she did that for ten years and then turned
23 it over.

24 Now, one of the important things in this case is she
25 is a Chinese citizen who came here to help these people.

E3oWliu2

Opening - Mr. Fischetti

1 Now, you heard the government's opening that they
2 intend to call witnesses who are cooperators, and I want you to
3 listen to their testimony very carefully, because he said this
4 is a case about lies, and that's the one thing I agree with you
5 about. It is about lies, the lies you're going to hear from
6 that witness stand, from people who are attempting to save
7 their own lives. Every one of those people who will testify
8 will tell you, and you will believe, that they're trading their
9 crime to get freedom by lying about my client. And there is
10 absolutely no doubt about that. And I'll prove it to you. And
11 that's what we'll do during this trial.

12 Something else I wrote down. The government said that
13 we're going to produce applications. These are the asylum
14 applications that they say are fraudulent, that they say that
15 these witnesses who are going to testify and worked at that
16 firm prepared them at my client's direction, to keep them here.
17 Okay? You will find that each and every one of them have pled
18 guilty to massive crimes, and what they're doing is gaining
19 their freedom from one day in jail for those crimes as long as
20 they take that witness stand, swear an oath to tell the truth,
21 and say exactly what they're telling them to say. And if they
22 deviate from it, if they lie, that they're going to prosecute
23 them. That's the kind of lies you'll hear. And they'll call
24 the cooperators, people who are cooperating with the
25 government, and I want you to listen to their testimony and

E3oWliu2

Opening - Mr. Fischetti

1 judge their credibility.

2 You know, each of us has a role in this courtroom.
3 Okay? The government's job is to prosecute. I will defend my
4 client to the best of my ability because I believe in her
5 innocence. The judge has a role, and she is the guardian of
6 the law. She will tell you what you can do, what you can't do.
7 We'll make objections, she'll rule on them, and she will run
8 this courtroom, as she should.

9 But you, every one of you here has the most important
10 role in this trial because you, and only you, will judge the
11 credibility of these witnesses. That's a lawyer's word. It
12 means believability. Do you believe them? And I think when
13 you hear the judge's charge, she will even tell you that people
14 who are cooperating and getting the benefit from their
15 cooperation, the chance to walk out here and not do a day, you
16 should listen to their testimony with caution and great care,
17 and that's what I want you to do, to decide that.

18 The government says you will hear evidence,
19 transcripts of people, people will testify, not the people who
20 are cooperating, but honest people, testify about my client and
21 how she did this. I tell you, that's false. You will never
22 hear such testimony. The government says they will put in
23 recordings of people testifying here as to what they said
24 during this time. You will hear transcripts, read them,
25 hundreds of conversations. See how many you find, as the

E3oWliu2

Opening - Mr. Fischetti

1 government's told you, where my client admits she was in a
2 fraud. I tell you you will hear none. None.

3 You will hear testimony about what they did. You'll
4 hear testimony about the deals they made, but you won't hear
5 any about my client admitting her guilt. You will hear
6 testimony of a witness here who was sent in under cover by the
7 government wearing recording devices, recording secret
8 conversations to try and prove my client is guilty. You will
9 hear that she made over 40 conversations, recorded. You'll
10 hear that she was there 18 times, 20 times, trying to talk to
11 my client, trying to prove that she was there during that time.
12 You will see that she never even met my client. Never mind
13 talk to her, never mind record her. Never even met her. And
14 that's the evidence the government wants you to believe.

15 You know, there's one quote here in one of the
16 conversations, I want to find it for you. Listen to this.
17 This is a conversation between that woman and a witness who is
18 going to testify here, Mr. Victor, another cooperating witness
19 that they have. We've got a lot of them. This is the
20 conversation, "Don't worry about it, everybody will push the
21 responsibilities on Liu Feng Ling because she is the boss. In
22 case there's legal trouble, they can push it on Liu." That's
23 the conversation they're going to play for you. And that's
24 exactly what they're doing here.

25 Other conversations you'll hear say basically the same

E3oWliu2

Opening - Mr. Fischetti

1 thing. There's one conversation, just one, with my client from
2 one of the witnesses in this case, attorneys who tried to
3 entrap her into saying certain things about being involved in
4 this fraud. She never says anything about it. So when the
5 government says that you're going to hear conversations,
6 conversations, of people with my client, hear them, not their
7 testimony, hear them, where you have proof of it, not just
8 their lies, proof of it, see if they do. Hold them to that.

9 The applications that they're going to put into
10 evidence, let me tell you, they say that these witnesses are
11 storytellers. They wrote up these fake applications, but they
12 wrote them up for these individuals. All right? And these
13 individuals were interviewed by asylum officers, they're
14 interviewed by people above asylum officers, and they go in,
15 according to the government, and they lie. They raise their
16 right hand and they lie and they say that this story that was
17 theirs was a lie, and they say, as the government says, it was
18 my client who interviewed them, prepared this, told them to say
19 it, and they have these applications.

20 Well, let me tell you something. Okay? I've been a
21 lawyer for a long time. They want to prove my client's guilty?
22 I'll tell you how to do it. They have all the names of these
23 applicants, every one of them. Okay? Every one of these
24 applicants committed a crime. Every one of these applicants
25 spoke to my client, told them how to do it, every one of them.

E3oWliu2

Opening - Mr. Fischetti

1 I challenge them to put one person on the stand, one, and say
2 that's true. One. One person to get on that stand, swear an
3 oath, and say: Yeah, they gave me to a storyteller, I went to
4 the storyteller, I reviewed everything they said, I said
5 exactly what they wanted me to say. I went, I swore an oath, I
6 met with Karen, she told me to do it. That's why we're here,
7 because she didn't, because she's innocent.

8 What do I want from you? All I ask is that you keep
9 an open mind. All I ask is that you be fair in this case,
10 listen to the judge's charge, and then decide the case. You
11 know, when we picked each of you in this case, remember you
12 were all sitting back there, and then we'd come up and talk to
13 the judge and one of you would come up and you'd go back and
14 you'd go forth, you know what we were trying to do? We were
15 trying to pick a fair jury. We weren't trying to pick a jury
16 of women, men, old, young, just a jury who is going to be fair.
17 And that's all I ask of you.

18 I ask of you to listen to the evidence, be fair. Use
19 your same common sense and listen to the judge and be as fair
20 with the presumption of innocence, reasonable doubt, burden of
21 proof, that you would want if a loved one was sitting over
22 there. Wouldn't you want a jury to do that, that doesn't make
23 up its mind until they hear the testimony, that they abide by
24 the judge's rules of presumption of innocence, reasonable
25 doubt, that you will look at these people who are testifying to

E3oWliu2

Opening - Mr. Maher

1 gain their freedom, that you'll take that into consideration?
2 That's all I'm asking you.

3 I'll have one more opportunity to come back after the
4 case is over to sum up. But I thank you for your attention. I
5 thank you for your service. I mean, as some judges say, and I
6 agree, this is the most important thing you can do for your
7 country other than military service. Because each of you are
8 going to be here, and you are going to judge the fate of a
9 fellow human being. All I ask is that you do that fairly.

10 Thank you for listening to me.

11 THE COURT: Thank you.

12 Mr. Maher.

13 MR. MAHER: Thank you.

14 Good morning. Vanessa Bandrich is absolutely not
15 guilty of joining any conspiracy to commit immigration fraud.
16 Falsely accused of a crime that she didn't commit, Vanessa has
17 been caught up in a web of deceit spun by a woman named Meng
18 Fei Yu and other fraudsters who are doing everything they can
19 to avoid going to prison for up to 15 years and being deported
20 back to Communist China.

21 How did this happen? I'd like to tell you.

22 Vanessa Bandrich is the daughter of Cuban immigrants.
23 Her parents and grandparents both fled the tyranny of Cuba.
24 Her father came here in the early 1960s. She was raised in
25 Miami, went to school there, and she did well. She worked hard

E3oWliu2

Opening - Mr. Maher

1 for success and is the first one in her family to go to law
2 school. Vanessa earned the equivalent of a full scholarship to
3 go to the University of Miami. And while she was at the
4 University of Miami, she worked. She worked as a paralegal as
5 well as her studies. She kept that job after graduating and
6 worked another two years, trying to figure out what she was
7 going to do with her life. She's done with college, what am I
8 going to do. So she's working and she decides she wants to be
9 a lawyer, and she applies to go to law school. She applies to
10 Nova law school in Miami and is accepted and enrolls.

11 Vanessa enrolls in the four-year program, the night
12 program, because she needs to work full time during the day in
13 order to pay for tuition. But Vanessa does that. She enrolls
14 in the night program. She works full time to pay her bills and
15 she still graduates half a year early. And that's in 2005.
16 But before becoming a lawyer, you have to do more than just
17 graduate law school. You have to pass the bar exam, and the
18 bar exam is a difficult test. It's quite difficult. Even
19 Hilary Clinton didn't pass it the first time. Vanessa,
20 unfortunately, didn't pass it the first time. But she didn't
21 quit her dream of becoming a lawyer. She studied more and she
22 took it again, a second time. And, unfortunately, she didn't
23 pass the second time. So what does she do? She says I am
24 going to keep studying and work and study and work, and she
25 does that. And then the third time she passes the bar. She

E3oWliu2

Opening - Mr. Maher

1 passes, and she gets accepted as a member of the bar of the
2 State of Florida. And that's in 2007 is, two years after she
3 had graduated from law school.

4 Now, Vanessa wants to get a job now, obviously, as an
5 attorney. She wants a full-time attorney position. She
6 doesn't want to be a paralegal anymore, because she's done
7 that. But like many young lawyers, she thinks the
8 opportunities will be plentiful. I mean, hey, you have a law
9 degree, people will tell you society says you've got a law
10 degree and you've got it made, and a lot of people think that.
11 But the reality is it's not that simple. It's not that simple.
12 2007, if you recall, was not a great year for our economy. The
13 stock market's tanking. Law firms are laying people off left
14 and right, downsizing, and there are not many opportunities for
15 Vanessa to get a full-time job in Miami as a lawyer. But she
16 tries, and after about a year, she opens up her own small law
17 firm. Vanessa Bandrich, P.A., and she tries to get some
18 business, generate some business with the contacts she has.
19 She is helped with her contacts from her father, a retired
20 Miami police officer. But, let me tell you, it's extremely
21 difficult for someone with a lot of experience to create a law
22 firm from the ground up. It's almost impossible for someone
23 just out of law school, just passing the bar, to start their
24 own firm and to keep it financially viable, and it just wasn't
25 working. It just wasn't working financially, despite her hard

E3oWliu2

Opening - Mr. Maher

1 work.

2 So around May of 2009, Vanessa is presented with an
3 opportunity to potentially have an attorney position, a
4 full-time position. Through a mutual friend in Miami, she's
5 introduced to a man named Troy Moslemi. He's an immigration
6 lawyer from Miami, but he's working in New York. And he tells
7 her about a position at the firm he's at and how she should
8 apply for it, that she might be a great person to work there.

9 Vanessa though is torn about this. She loves Miami,
10 her family is there. Not just her family, her husband's family
11 is there. All of her friends are there. But she also wants to
12 give her career a chance. Can I make it, can I actually do
13 this? And so she's thinking of this. She knows that things
14 are tough in Miami to get a job, and she's going over this, and
15 she's also drawn to the firm's practice. It's an immigration
16 practice. Okay? And that's special because as a child of
17 first-generation immigrants, parents and grandparents who all
18 fled the repressive regime in Cuba and who built a new life
19 free from tyranny in the United States, Vanessa knows that is
20 not just pie in the sky, that freedom in the United States is
21 not just words. But it is a real thing that can transform the
22 life of a young girl and can transform the lives of her family.
23 She knows this.

24 So she agonizes over the decision, but she decides
25 with her husband, Luis, that she is going to move to New York

E3oWliu2

Opening - Mr. Maher

1 and take the job. And she comes up and interviews for the job
2 in New York which is with the firm called Moslemi & Associates,
3 and she's hired for the position and she and her husband move
4 up from Miami. She's quickly thrown into a bustling immigrant
5 practice that focuses on helping immigrants from China, helping
6 them navigate our complicated immigration laws.

7 Now, Vanessa learns, again, she is basically right out
8 of law school, that this law firm, like many in the immigration
9 law field and probably most law firms that have more than one
10 person, has a division of labor. Right? People split up their
11 roles and do different things. The clientele is almost
12 exclusively immigrants from China who don't speak English.
13 They speak the main language in China, which is called
14 Mandarin. Okay? Now, the paralegals and the administrative
15 staff at the law firm are from China, speak Mandarin fluently,
16 and they have the role of meeting with the clients for the
17 first meetings, the first interviews, and helping the clients
18 prepare the paperwork. And they assist the clients in filling
19 out the paperwork, and that's the paperwork to begin the asylum
20 process.

21 Now, one part of the asylum application process is
22 submitting a client's statement, as you heard earlier,
23 explaining what the person went through in their former
24 country, how they were persecuted, what happened, and why
25 they're afraid to go back. Okay? The statement must be

E3oWliu2

Opening - Mr. Maher

1 submitted to the U.S. immigration officials in English. You
2 can't submit a Mandarin form to the U.S. Government. They
3 won't accept it. They'll mail it back to you, they just won't
4 accept it. Okay? It has to be translated. It has to be
5 submitted fully in English. All right? So to address this
6 language barrier, the firm had support staff, administrative
7 staff, who spoke Mandarin, again, who would translate these
8 statements into English, and put it in the file to then be
9 forwarded to the immigration office.

10 Now, Vanessa's role was very specific. She was not a
11 paralegal. She was an attorney who was to be in immigration
12 court. Okay? The initial client interviews and the paperwork
13 was for the paralegals and support staff. All right? Her job
14 was to go when the case eventually got to court. Okay? Now,
15 you're going to learn the process of immigration law -- and
16 probably by the end of this trial, you're going to know it
17 better than most lawyers -- the thing is this. When a person
18 applies for asylum, they don't just go to immigration court.
19 There's basically a process where first they go to an interview
20 with a person who is called an asylum officer. This interview
21 is an informal interview. It's not adversarial, and by
22 adversarial I mean this. This courtroom here is adversarial.
23 You've got the government, we have the defense. We are both
24 arguing for our positions. Okay? That's adversarial. The
25 asylum interview is just the officer, usually, and the person,

E3oWliu2

Opening - Mr. Maher

1 and maybe a translator that the person has to bring with them.
2 And they discuss the person's application. Okay?

3 Vanessa is not involved in going to those interviews.
4 That's with the person themselves and maybe a translator
5 meeting with the asylum officer. If the asylum officer hears
6 that person's story -- and by story, let's be clear. When you
7 hear the word "story," story can mean many things. It doesn't
8 mean lies. Okay? I can say I'm going to tell you my life
9 story. Does that mean I'm going to tell you a lie? No. It
10 means I'm telling you the story of my life.

11 So when these people tell the story of their lives
12 with the asylum officer, if the asylum officer agrees they
13 qualify for asylum because they either have been persecuted or
14 they have a legitimate fear of future persecution, the asylum
15 officer can grant asylum and that person basically gets all the
16 benefits you heard about. They can stay in this country, they
17 can get a job, and they can stay here indefinitely. Most cases
18 though, however, the asylum officers don't grant asylum. They
19 deny it. And then what happens is this. All right? The
20 person now who voluntarily came to the government -- remember
21 this, this is a person who is here undocumented. Now, there
22 are some who might be on student visa, but let's talk about the
23 people who come who don't have documents. They have
24 voluntarily come to the U.S. Government and said I want asylum.
25 If the asylum officer says no, what position is this person at

E3oWliu2

Opening - Mr. Maher

1 now? They have told the government, Hey, here I am, here I am,
2 I have no papers, I'm in this country. So what happens at that
3 point, once asylum's denied? The officers forward the
4 information along and the person is called "referred," and that
5 means they're now sent into immigration proceedings which are
6 called removal proceedings.

7 Removal, you can call it a euphemism, I suppose. It's
8 the changed language from the old days called deportation
9 proceedings. Okay? Removal means now this person who tried to
10 get asylum, because it's denied, is now being faced
11 involuntarily with being deported from this country. All
12 right? And then once you're deported, forcibly, by the U.S.
13 Government, you're usually considered what is called
14 inadmissible. Inadmissible means we kick you out, you may not
15 come back. And if you come back, you're going straight to
16 prison.

17 So now these people are in the position, and by these
18 people, I mean people who have applied to asylum, they've been
19 interviewed and it's been denied, now they're in immigration
20 court, and they get a notice, you must appear in immigration
21 court for removal proceedings, that is the stage that Vanessa
22 Bandrich gets involved in as the lawyer in an adversarial
23 proceeding. Okay? That is when. And at that point, then, is
24 the preparation, like any lawyer does for a client who is going
25 to go into court, of understanding what the case is about,

E3oWliu2

Opening - Mr. Maher

1 looking at the file that's already been prepared by the
2 paralegals and support staff. Okay?

3 Now, again, except for basically Vanessa and maybe one
4 or two people here and there, everyone at these law firms
5 speaks Mandarin, and the cultural ties within the office are
6 very strong, very strong. The Lawyers, paralegals, support
7 staff speak Mandarin almost exclusively during the day, and I
8 don't mean just with clients in their interviews. I'm talking
9 about with each other. All right? They order lunch together
10 with the food that they like. Okay? There are strong family
11 ties within the office. A number of the people in the office
12 are related, either by blood or marriage. Okay? And in many
13 ways, Vanessa feels that she's an outsider both at Moslemi and
14 at the firm you'll hear later called Bandrich & Associates,
15 again, where she is trying to gain legal experience and learn
16 her way in these firms.

17 So, you have heard now the government talk about all
18 this fraud, and Mr. Fischetti touched on it. I think the
19 government said 2,000 cases of fraud by these firms and people
20 applying for persecution.

21 I want to digress for just half a second and express
22 to you this is a difficult process that you all are about to go
23 through, one, because of the tremendous responsibility that you
24 all have, having the lives of people in your hands. The other
25 difficult part is we're asking you to follow the information in

E3oWliu2

Opening - Mr. Maher

1 this trial, and it's very disorienting. You can imagine the
2 trial you're about to go through, getting information for you
3 as a juror, it's kind of like all the information we had was a
4 novel and we took each chapter and we ripped each chapter into
5 five different sections and then we shuffled them and started
6 reading that book to you, you might have difficulty following
7 the story. A trial is kind of like that because you have to
8 hear one witness at a time. They might talk about different
9 periods of time and it can be confusing until everything starts
10 to sync together. So all of us, I'm sure, join in asking that
11 you just defer judgment until you hear everything in this case
12 because something at the front of the case, you might think,
13 Oh, wow, I really think this, but you haven't heard everything
14 and it might not follow the way you might expect and you're not
15 going to see the whole picture until the end.

16 But the issue about the persecution, you're going to
17 hear and the government's own witnesses are going to agree,
18 persecution in China is absolutely real, absolutely real. And
19 why is it, why is it that immigration judges in our country,
20 from 2007, '8, '9, '10, '11, '12, until probably three blocks
21 away from us today are granting asylum to immigrants from China
22 on probably a daily basis? Why are they doing this? Because
23 China -- and by China, I mean the Communist government of
24 China -- persecutes Christians. A Christian may not practice
25 their religion in any way that a Christian in this country can.

E3oWliu2

Opening - Mr. Maher

1 They are told who their pastor or reverend has to be, they have
2 to be approved by the government, and they can't teach anything
3 in Christianity which is incompatible with the ideology of a
4 Communist government, and you can imagine there's quite a lot.
5 If you try to start an underground church, perhaps like back in
6 Roman days, and they find out about it, it's over.

7 China persecutes women. They persecute women through
8 what's called the one-child policy and what they call family
9 planning. That sounds like a great idea, but family planning
10 in China means, the laws that have been there for a while, that
11 it was illegal for anyone to have more than one child, more
12 than one. A married couple, if you're single, you're not
13 supposed to have any kids. But a married couple were not
14 permitted to have more than one child. In recent years, it's
15 been expanded a bit. Some people may have two, depending on
16 which province or which state you live in. What happens if a
17 woman gets pregnant either the second time if it's against the
18 law in their province or they get pregnant the third time if
19 it's against the law in the province? What do you think
20 happens? They are forced by the state to have an abortion.
21 Forced.

22 The state will also sterilize women against their
23 will. The state will also sterilize men against their will for
24 the violation of the one-child policy or the family-planning
25 policies. China persecutes members of an organization or

E3oWliu2

Opening - Mr. Maher

1 movement called falun gong. If you've seen it on TV or
2 anything before, if you've ever seen people doing t'ai chi in
3 the park, a lot of people draw analogies from falun gong and
4 people who do movements like that, the Chinese government
5 considers it a subversive group and again a target for
6 persecution. And by persecution, again, Mr. Fischetti, I
7 think, made it clear. We're not just talking about no, no,
8 that's bad, we're going to give you a ticket. We're talking
9 about imprisonment, we're talking about potential
10 disappearance, physical abuse, everything in between.

11 This persecution is real. The government's witnesses
12 will concede it. Immigration judges in our country grant
13 asylum to Chinese immigrants every day because of it. And
14 because of these exact forms of oppression. Okay?

15 Now, remember, China has over a billion people, the
16 most populace country on this planet. So if they have a policy
17 such as this one-child policy, how many people do you think
18 that's affecting at once? Ten, 11? No. Thousands, hundreds
19 of thousands, millions potentially. So if a lot of people have
20 the "same" story of being persecuted as Christians, you know
21 what, that's because they are being persecuted as Christians,
22 because there are so many in China being persecuted as
23 Christians, and they're being persecuted the same way by the
24 government. So these stories are not fake that are being
25 granted by these judges every day.

E3oWliu2

Opening - Mr. Maher

1 Turning back to Vanessa Bandrich, she worked at the
2 firm of Moslemi & Associates for about a year. About 2010, the
3 leadership of Moslemi, of the firm, decided for various reasons
4 the firm needs to split apart. Vanessa's told that if she
5 wants to open up a firm under her name, they will take care of
6 all the staffing, the administration, and the client referrals.
7 Again, Vanessa's just been practicing really for about a year
8 at this point. Vanessa also will be able to earn some more
9 money than she had as an entry-level attorney. Vanessa is not
10 told that she is going to be joining some conspiracy to commit
11 immigration fraud.

12 (Continued on next page)

13
14
15
16
17
18
19
20
21
22
23
24
25

E300LLIU3

Maher - Opening

1 MR. MAHER: And she has no reason to think that she is
2 doing anything illegal, no reason, whatsoever, to think so.

3 So around May of 2010, a firm called Bandrich &
4 Associates is created. And just like other immigration law
5 firms, there is a Division of Labor. Vanessa continues to
6 represent clients in immigration court, but she is bay an
7 employee of the firm. The nuts and bolts of this firm, the
8 day-to-day business, all right, is being run by a man named
9 Harry Liu. A number of the support staff and family members
10 from Moslemi & Associates move over to the firm, to the
11 Bandrich firm and directed directly to Harry.

12 Harry has worked at Moslemi & Associates. Now he was
13 not the office manager there, but at the new firm, Harry, for
14 the first time, is in charge of running the entire office. And
15 unfortunately, Harry turns out to be a very controlling man who
16 was mean and manipulative to his staff and colleagues.

17 And just like at Moslemi & Associates there is a huge,
18 huge cultural divide, huge cultural, linguistic, and familial
19 divide, between the support staff and other -- and other
20 employees, administrative, and Vanessa. All the firm's client
21 interactions, again, are done in Mandarin, the staff speaks to
22 each other in Mandarin, and many of the staff members are
23 actually family. All of the clients have their initial
24 interviews with either her or one of the Mandarin-speaking
25 support staff, okay.

E300LLIU3

Maher - Opening

1 Now, these paralegals and support staff are not
2 necessarily the best translators in the world. There is no
3 requirement that they are court certified. And trust me, I
4 don't think that they were. But they are responsible for
5 translating everything that the client says and writes.

6 And, again, Vanessa does not get involved in meeting
7 with clients until after the clients' initial paperwork has
8 already been prepared by Harry and his staff.

9 Now, unbeknownst to Vanessa, while she is representing
10 clients in immigration court, the FBI, and the government, the
11 prosecutor's office, begins sending fake potential clients to
12 the firm.

13 These fake potential clients are wearing recording
14 devices, little cameras with recordings, okay. Little mics.
15 What do they pick up on these hidden microphones? Well, none
16 of these fake clients working for prosecutors ever tape Vanessa
17 doing anything illegal. Nothing. Why? Simple. Because she
18 was not involved in anything illegal.

19 The prosecutors and their agents are also meeting with
20 former disgruntled employees of Moslemi and the Feng Ling Liu
21 law firm from before. One of these people is a woman named
22 Meng Fei Yu, who tries her best to get Vanessa to admit to
23 something that is not true. Meng Fei does everything she
24 can -- and you will hear this, and see this yourself -- to get
25 Vanessa to say that she is part of some conspiracy to commit

E3O0LLIU3

Maher - Opening

1 fraud. But you are going to see those tapes, and you're going
2 to see that Vanessa is not a part of any conspiracy to commit
3 immigration fraud.

4 So why does Meng Fei try to trick Vanessa? Why is she
5 doing this, trying to her to admit to a crime that Vanessa
6 didn't commit? I'll tell you why. Because Meng Fei is facing
7 15 years in prison and deportation to Communist China and all
8 of the policies that we have been talking about.

9 And in order for Meng Fei and the other fraudsters
10 that are going to be paraded in front of you to avoid prison
11 here -- and, again, you don't get deported until after you do
12 your prison here, all right. So after they get deported. To
13 avoid that, they have to give the government something that is
14 legalese. This is a legal phrase, okay, it's call substantial
15 assistance.

16 What do you think substantial assistance might mean?
17 I tell you what Meng Fei believes it means, is that if she can
18 bring down a lawyer and hand it to the government, then she
19 gets her get out of jail card, for free, and she gets to stay
20 in this country forever. And not just her. Her husband, who,
21 coincidentally, also has an asylum claim before the government.
22 So just like Meng Fei, you're going to hear from some other
23 fraudsters who have every incentive you can imagine to shade
24 the truth and to outright lie and manipulate.

25 Their words are going to ring hollow, because the

E3O0LLIU3

Maher - Opening

1 reliable evidence is gonna show that Vanessa did not join any
2 criminal conspiracy to commit immigration fraud and that she is
3 absolutely innocent of these charges.

4 Thank you.

5 THE COURT: Thank you. Mr. German.

6 MR. GERMAN: Good morning, ladies and gentlemen.

7 My name is Stan German. And, myself, along with my
8 young colleague, Jason Richland, represent Rui Yang in this
9 case. I have come to learn that, in Chinese, R-U-I is spelled
10 Ray. And so I'm going to call Ms. Yang by her Americanized
11 name, which is Rachel Yang.

12 You have heard from the government, you have heard
13 from Mr. Fischetti, you have heard from Mr. Maher. Because I
14 promise you, I'm going to be brief because, really, as the
15 evidence will show, the story of Rachel Yang is a simple one.

16 In 2010, Rachel came to the United States from China,
17 a country that we have heard quite a bit about this morning.
18 About six months later, she was joined by her husband who also
19 emigrated from China.

20 In 2011, Rachel moved and settled into Queens, New
21 York in Flushing. She was living with her husband. And there
22 came a point where Rachel gave birth to little baby girl named
23 Emily.

24 Now, the three of them were living in a single room in
25 Flushing, New York. They shared a house with four other

E300LLIU3

German - Opening

1 families, but her whole world was, literally, one bedroom.

2 She was out of work. Her husband was out of work.

3 She had a baby girl. And she was looking for work. She was
4 not on public assistance, was not asking for anything. She was
5 looking to the classifieds, trying to get a job.

6 And that, ladies and gentlemen, is why Rachel Yang is
7 here today. She answered an ad. The advertisement said
8 something along the lines of: Looking for Chinese-speaking
9 office worker.

10 Rachel called the ad, they gave her an interview. She
11 took the bus, two hours from Flushing, came to Chinatown and
12 had an interview. She went home. She hoped she had gotten the
13 job. The office was nice, seemed like nice people. And two
14 days later, she received a phone call that they were going to
15 hire Rachel Yang.

16 Now, that phone call came in late October of 2011, not
17 2007 when the government contends this whole alleged conspiracy
18 starts. Not 2008. Not 2009. Not 2010. Late 2011 is when she
19 begins to work. Late October of 2011 which, as you will hear,
20 is a little more than a year before the worst day of Rachel's
21 life when she was arrested in connection with this case.

22 But let's go back to late 2011. Rachel was going to
23 start working in a respectable American law office, working for
24 American-trained lawyers, helping Chinese immigrants with their
25 immigration status in the United States. So she went to work

E300LLIU3

German - Opening

1 at the Bandrich law firm.

2 Let's be clear about something. Rachel is not a
3 lawyer. Rachel is not a paralegal. Rachel has never had any
4 sort of legal training. She was hired to be an office worker.
5 And why? Use your common sense. We know what that means.
6 Organize files, answer the phones. Assist the Chinese-speaking
7 clients in organizing these asylum applications, based on the
8 information that was already in the client files which she did
9 not create. And that will be evident in the testimony in this
10 case.

11 She helped draft their statements of persecution. She
12 translated some of these documents in the office. That's what
13 she was hired to do. And that's what she did. She never went
14 to court. She never went to an asylum interview. She never
15 performed any translations at the immigration office. She
16 simply performed her office duties.

17 And let's talk about the office. You are going to
18 hear that there were the lawyers in the office, there were the
19 office managers, there were different staff members. Rachel
20 Yang was not a boss. Rachel Yang was not a manager. Rachel
21 Yang never received a single cent from a single client. Rachel
22 Yang supervised nobody. Rachel Yang. You have heard about
23 some familial relationships and relatives. She is related to
24 no one. She was the lowest person in the totem pole. She
25 didn't even have keys to the office.

E300LLIU3

German - Opening

1 The government has spoken about millions of dollars.
2 Well, I have news for you. Rachel Yang was basically paid
3 minimum wage. She didn't have healthcare benefits. She didn't
4 vacation. No paid vacation. If you were sick and you couldn't
5 come to work, they didn't get paid; no paid sick days. She
6 commuted three hours a day to go to work. And she was only
7 paid for the time she was there.

8 As far as her training for this job, who trained her?
9 Her boss trained her. The other women who were in the office
10 pool, they trained her on what to do and what was expected of
11 her. And that's her story.

12 She was a person who immigrated from China
13 approximately four years ago, went to work in an office, and
14 was just doing office work. Not a single person is going to
15 get on that witness stand and say she conspired to do anything,
16 that she had a conversation with them. You are going hear from
17 witness after witness. They won't even know who Rachel Yang
18 is, never seen her, never spoke to her. Just one of these
19 obscure people who worked at the law firm, minded her business,
20 and went home to her husband and young baby every night.

21 At no time did she conspire, did she agree, did she
22 knowingly assist anyone in committing immigration fraud. And
23 that's what the evidence is gonna show. And the judge will
24 tell you, not just the evidence, look at the lack of evidence
25 in this case. There will be witnesses where I may not ask

E300LLIU3

German - Opening

1 questions, because they don't know her, they never dealt with
2 her. So the lack of evidence, together with the evidence, is
3 going to show that Rachel Yang had nothing to do with a
4 conspiracy to commit immigration fraud.

5 As you are listening to your testimony over the next
6 few weeks, ladies and gentlemen, just use your common sense.
7 You have heard that theme throughout this trial. You know your
8 common sense doesn't leave just because you walk into this
9 ornate courthouse. You know what office workers do. You know
10 what people at the bottom of the totem pole do. So use your
11 common sense. Look who she spoke to. Look who she knew and,
12 just as importantly, who she didn't know in this case. Look at
13 what Rachel Yang actually did. And when you apply your common
14 sense, you only come to one conclusion, and there is only one
15 just verdict for Rachel Yang. And that is that Rachel Yang
16 never ever conspired to commit immigration fraud.

17 Thank you.

18 THE COURT: Thank you. Now we're going to take a 15
19 minute break.

20 So I'm going to ask you not to speak about the case
21 either with each other or anyone else, and keep an open mind.

22 Thank you. Please rise.

23 (Jury excused)
24
25

E300LLIU3

German - Opening

1 (In open court)

2 THE COURT: All right, I'll see you all at five of
3 twelve. Thanks.

4 (Recess)

5 THE COURT: May I see counsel at side bar for a
6 moment)

7 (Continued on next page)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E300LLIU3

German - Opening

1 (At the side bar)

2 THE COURT: So, as we discussed earlier, the revised
3 subpoena to the Eastern District, to the human resources
4 manager, looks fine. So you can give that to my deputy. And I
5 don't think I can prevent you from calling the magistrate's
6 chambers. So I leave that to your discretion.

7 MR. FISCHETTI: Thank you, Judge.

8 THE COURT: And this particular colloquy should be
9 under seal, please.

10 MR. KOVACS: Let the Court know we did speak with Mr.
11 Howell. He advised that he will accept the subpoena via fax,
12 which will help facilitate this. However, once he gets it, he
13 sends it to Washington, D.C. because they have people there
14 that deal with this. So I'm not sure what their turn-around
15 time will be, but I just wanted to give you a heads up that
16 we'll get this out, with all haste, but we can't predict how
17 long D.C. will take to get back to us. We may not have it by
18 the time Mr. Yu is done testifying, which means we might need
19 him to remain available for recall, if necessary.

20 THE COURT: And is that something you intend to inform
21 the government about?

22 MR. KOVACS: Not yet. Let's wait to see what
23 happened. Maybe they do comply when we get the information
24 tomorrow.

25 THE COURT: Okay, thank you.

E3O0LLIU3

German - Opening

1 MR. FISCHETTI: Can I have a minute with counsel?

2 THE COURT: Yes. Tell me when you are ready. Just a
3 minute.

4 (Continued on next page)

5 (Pages 107-109 SEALED by order of the Court)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E3O0LLIU3

German - Opening

1 (In open court)

2 THE COURT: Why don't we go until about 1:15 and take
3 our lunch break since we got a late start okay?

4 THE DEPUTY CLERK: All rise.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E300LLIU3

German - Opening

1 (In open court)

2 (Jury present)

3 THE COURT: You can be seated.

4 Now, we've come to the portion of the trial where the
5 government is going to present its case. Since we got a late
6 start today, we're going to go for about an hour and 15
7 minutes, until around 1:15 or 1:20, and we'll take a lunch
8 break at that point.

9 Call your first witness.

10 MR. BOONE: Government calls Ashley Caudill-Mirillo.

11 ASHLEY CAUDILL-MIRILLO,

12 called as a witness by the government,

13 having been duly sworn, testified as follows:

14 THE DEPUTY CLERK: State and spell your name for the
15 record.

16 THE WITNESS: Ashley, A-S-H-L-E-Y, Caudill,
17 C-A-U-D-I-L-L, hyphen. M-I-R-I-L-L-O.

18 THE DEPUTY CLERK: Thank you. You may be seated.

19 THE WITNESS: Thank you.

20
21 MR. BOONE: May I proceed, your Honor?

22 THE COURT: You may.

23 DIRECT EXAMINATION

24 BY MR. BOONE:

25 Q. What is your educational background?

E300LLIU3

Caudill-Mirillo - direct

1 A. I have a bachelors degree in religion and political
2 science, masters in Islamic studies, and a law degree in law.

3 Q. Are you currently employed.

4 A. Yes, I am.

5 Q. Where do you work?

6 A. I work at U.S. Citizenship and Immigration Services.

7 Q. Is that a part of a government agency?

8 A. Yes, it is. It's part of the Department of Homeland
9 Security.

10 Q. Where is your office located?

11 A. Our office is located in Rosedale, Queens.

12 Q. And how long have you worked there?

13 A. I worked there for a little over five years.

14 Q. And, generally speaking, what is your office responsible
15 for?

16 A. Our office is responsible for adjudicating petitions for
17 asylum in the United States, that are filed in our
18 jurisdiction.

19 Q. Do you have a particular title or position?

20 A. Yes. I am the Deputy Director of the New York Asylum
21 Office.

22 Q. How long have you held that position?

23 A. A little over two years.

24 Q. And what are your responsibilities as the Deputy Director?

25 A. I assist the director of the office in overseeing both the

E300LLIU3

Caudill-Mirillo - direct

1 management aspect of the office, seeing that the officers
2 are receiving the sufficient amount of cases. Also the
3 operational side, which is making sure that cases are processed
4 in a timely fashion.

5 Q. What other positions have you held in the office?

6 A. I was a supervisory asylum officer and an asylum officer.

7 Q. And when did you hold those positions?

8 A. I was an asylum officer from 2008 to 2010, and supervisory
9 asylum officer from 2011 to 2012.

10 Q. And what were your responsibilities in each of those
11 positions?

12 A. As asylum officer, my responsibility was to review evidence
13 for applications for asylum. Also to interview individuals
14 seeking asylum to investigate their credibility, ask them
15 questions, and see if they fully qualify for immigration
16 benefit and, ultimately, to make a decision on the case.

17 As a supervisory asylum officer, my job was to oversee
18 a team of four to five asylum officers and, also, review
19 decisions for legal sufficiency, and also to make sure they
20 were following the appropriate procedures and policies.

21 Q. What is political asylum?

22 A. Political asylum is an immigration benefit that is
23 available in the United States. It is essentially available to
24 individuals who are present in the United States, who are
25 unable or unwilling to return to their country of origin

E300LLIU3

Caudill-Mirillo - direct

1 because of past persecution or a well-founded fear of future
2 persecution.

3 Q. Are there any restrictions on who can apply?

4 A. Yes. The people have to be physically present in the
5 United States to apply for asylum.

6 Q. And may someone who has entered the country illegally
7 apply?

8 A. Yes.

9 Q. Can someone who has been convicted of a crime apply?

10 A. Yes. They can apply. Depending upon what that crime is
11 they may, in fact, not be eligible to receive the benefit. But
12 they can apply.

13 Q. Does the length of time one has spent in the United States
14 affect their ability to apply?

15 A. Yes. As a general rule, the individuals are supposed to
16 apply within a year of their arrival.

17 Q. What types of evidence is typically submitted to prove that
18 a person has been in the country for less than a year?

19 A. Okay. Well, the most direct piece of evidence would be
20 actual evidence of their entry, which would be maybe a stamp on
21 their passport, or some type of stamp on what's called an I 94
22 which is a document that is given to individuals when they
23 enter the country by Customs and Border Patrol. Also, indirect
24 evidence could be evidence that they've traveled and have
25 stamps in their passports from other countries on their way to

E300LLIU3

Caudill-Mirillo - direct

1 the United States. And lastly, the most common piece of
2 evidence is some kind of documentation indicating that they
3 were in their home country within the last year. And that can
4 be a variety of forms, anything we see, typically from bills to
5 receipts, on-the-job wages statements; that type of
6 documentation.

7 Q. Does the evidence sometimes include information about a
8 route a ticket applicant took to get to the United States?

9 A. Yes, it can. That can be in the form of either airline
10 tickets sometimes, or as I said, stamps in their passport
11 indicating a path of travel.

12 Q. And do asylum officers ever attempt to verify that
13 information?

14 A. We do attempt to verify. We are limited to the type of
15 information. The United States has agreements with certain
16 countries to share travel records and documentation. We don't
17 have those types of agreements with every country. So we do
18 attempt to verify it through the sources that we have access
19 to. And if we're unable to, then we are unable to.

20 Q. Who determines whether someone qualifies for asylum?

21 A. Well, the determination would be made by, in our case with
22 our agency, by the individual officer that interviewed the
23 applicant and made a decision on the case.

24 Q. And how do they make that determination?

25 A. Well, they will review the evidence, both before and after

E300LLIU3

Caudill-Mirillo - direct

1 the interview. Based on the evidence they receive, they will
2 conduct an interview designed to, in a nonadversarial manner,
3 elicit testimony from the applicant about what happened to them
4 in their home country, who committed acts of harm against them
5 in their home country, why they feel they are unable to return,
6 and what type of harm they might fear that they would
7 experience if they were to return.

8 With that information, they would make a credibility
9 determination and, ultimately, analyze the facts to see if
10 it meets the requirements under the law.

11 Q. What do you mean by credibility determination?

12 A. Well, the officers are required to make a determination
13 whether they think the person is telling the truth or not.
14 Essentially, that's what credibility is. They would do so
15 through a variety of means. First, of course they would
16 compare the documents that they are receiving to see if they
17 are consistent with what the applicant's telling them occurred.
18 They also will examine the applicant's testimony, internally,
19 which means they would look at what the applicant is testifying
20 to at one point in the interview and, later, to see if it is,
21 on the whole, consistent. And, lastly, the major source would
22 be testing to see if they think this testimony is both detailed
23 and also consistent with known country conditions.

24 Q. Who sets the eligibility criteria for asylum?

25 A. That is set by Congress. Through statute.

E300LLIU3

Caudill-Mirillo - direct

1 Q. Now, what benefits come along with being granted asylum?

2 A. Once a person is granted asylum, they are allowed to live
3 in the United States for an indefinite period of time. They
4 are also eligible to include other family members, such as
5 their spouse or unmarried children under the age of 21, to also
6 live and work in the United States for an indefinite period of
7 time. They, depending upon the state and what they have
8 available, they may be eligible to receive certain types of
9 assistance, whether it be educational grants or job training.
10 Ultimately, they have the ability to apply for a green card
11 after a year and, possibly, sometime later, citizenship.

12 Q. Is there a limit on how many people can be granted asylum
13 in a given year?

14 A. There is no limit.

15 Q. Now, you testified earlier that you work in the asylum
16 office located in Queens. How many other asylum offices are
17 there in the United States?

18 A. There are eight offices, total.

19 Q. And where are they located?

20 A. They are located in New York, Newark, Miami, Arlington
21 Virginia, Chicago, San Francisco, Los Angeles. I think -- and
22 I think that's it. Oh, I'm sorry, Houston, Texas.

23 Q. Are different offices responsible for different geographic
24 regions?

25 A. Yes, they are.

E300LLIU3

Caudill-Mirillo - direct

1 Q. And what geographic region is the Queens office for?

2 A. For applications filed within 12 counties in and
3 surrounding the New York City area. That would include xxx
4 Dutchess, King's, Nassau, Orange, Putnam, Queens, Rockland,
5 Richmond, Suffolk, Sullivan, Ulster, and Westchester.

6 Q. Does that mean that someone applying to the Queens office
7 must live in one of those areas?

8 A. Yes, it does.

9 Q. How does a person apply for a political asylum?

10 A. We have -- our agency has a website. It is www.uscis.gov.
11 And there is an application form that is located on that
12 website. They can download the application and fill it out and
13 then they send it to one of our service centers.

14 Q. And what materials must be filed with the application?

15 A. Technically, all that is required is the actual completed
16 application, and some statement, either in the application
17 itself or a separate statement, indicating why the person is
18 seeking asylum.

19 We also ask that the applicant provide any documentary
20 evidence that they have at the time of filing. It just assists
21 us in reviewing the applications in advance. But sometimes
22 that information is provided on the day of the interview.

23 Q. You mentioned the statement. What information must be
24 contained in that statement?

25 A. Well, the applicant, either in the I 589 -- sorry, the

E300LLIU3

Caudill-Mirillo - direct

1 application itself, or in a separate statement, must indicate
2 what happened in their home country and why they feel that they
3 are unable to return.

4 Q. And you mentioned that, in addition to the statement,
5 sometimes other documents are provided?

6 A. Yes.

7 Q. Can you give an example of what types of documents are
8 typically provided?

9 A. Sure. Often copies of passports, either to establish
10 identity, where the person is from, or as I mentioned evidence
11 of travel. Sometimes medical reports. If the person was
12 physically harmed in their country. Or psychological reports,
13 if they have some continued psychological trauma as a result of
14 the harm. If they received fines or some type of other
15 administrative penalties in their home country they may submit
16 some type of receipt or notice of conviction for that.

17 Q. Are the statements made, in an application for asylum, made
18 under oath?

19 A. Yes, they are.

20 Q. Can someone submit an asylum application on behalf of
21 someone else?

22 A. They can. Another person can assist the primary applicant
23 in completing the application, but the actual applicant is
24 responsible for filing the application themselves. Yes.

25 Q. And if someone assists another person in applying for

E3O0LLIU3

Caudill-Mirillo - direct

1 asylum, is that fact indicated somewhere in their application?

2 A. Yes, it is.

3 Q. Are there organizations that routinely assist individuals
4 in applying for asylum?

5 A. Yes, there are.

6 Q. And what kind of organizations are those?

7 A. Law firms. Often, there are nonprofit organizations that
8 have either a general focus on asylum or perhaps focus on
9 certain countries and communities to provide immigration
10 assistance. Law school clinics, or pro bono attorneys,
11 typically.

12 Q. How much does it cost for an applicant to apply for asylum?

13 A. There is no fee to apply for asylum.

14 Q. I want to show you what's been marked for identification as
15 government exhibit number 1. Do you recognize that document?

16 A. Yes, I do.

17 Q. What is it?

18 A. This is the asylum application. It is also called an I 589
19 application.

20 Q. And is it a fair and accurate representation of the asylum
21 application, the form that must be submitted by someone seeking
22 asylum?

23 A. Yes, it is.

24 MR. BOONE: Your Honor, the government offers
25 government exhibit 1 into evidence.

E300LLIU3

Caudill-Mirillo - direct

1 MR. FISCHETTI: No objection.

2 MR. MAHER: No objection.

3 MR. GERMAN: No objection.

4 THE COURT: It will be admitted.

5 MR. BOONE: Permission to publish.

6 THE WITNESS: Yes.

7 (Exhibit published)

8 (Government's Exhibit 1 received in evidence)

9 BY MR. BOONE:

10 Q. Starting with page 1 of the application -- my screen went
11 off, I don't know if the jurors' went off.

12 THE COURT: If any jurors screens are not working,
13 please raise your hand.

14 THE DEPUTY CLERK: Might take a second.

15 THE COURT: Give us one minute, please.

16 MR. BOONE: We'll attempt to use the electronic
17 program.

18 THE COURT: So raise your hand again if you don't see
19 anything on your screen.

20 A JUROR: It is blurry.

21 THE COURT: Okay. Is that better?

22 A JUROR: Now it went off. When you try to enlarge
23 something, it goes off.

24 THE COURT: Okay. Do we have hard copies we might be
25 able to show the jury?

E300LLIU3

Caudill-Mirillo - direct

1 MR. BOONE: We do.

2 THE COURT: And we'll work on the technology over
3 lunch, I apologize.

4 MR. BOONE: Maybe easier to use the Elmo.

5 THE COURT: I see myself.

6 MR. BOONE: Making sure we're all here.

7 A JUROR: Okay.

8 THE COURT: Raise your hand if you have a problem.
9 Okay, we still have two.

10 A JUROR: It is only ours that is blurry, everybody
11 else's is fine.

12 THE COURT: Just lean over and look at the screen in
13 front of you. Thank you.

14 MR. BOONE: Okay.

15 BY MR. BOONE:

16 Q. Focusing on the first half of page 1, what information is
17 generally provided in that section?

18 A. On the first half of page 1, this is where the applicant
19 would provide basic biographic information on themselves,
20 specifically: Their name or any alternate variations of their
21 name that they have used in the past; their address here in the
22 United States; if they have, if they are choosing to use a
23 different address for mail. And, then, it would move down to
24 gender, their marital status, their date of birth, and the
25 country of their birth.

E300LLIU3

Caudill-Mirillo - direct

1 Q. And the second half of page 1, what information is
2 generally provided in that section?

3 A. In this section, the beginning of the section is where the
4 applicant would list their nationality, because that may in
5 fact be different from the country of their birth. If they
6 practice a religion or associate themselves with any particular
7 race, ethnic, or tribal group. And the bottom half of this
8 screenshot is basically where the applicant would indicate if
9 they have ever been in immigration proceedings before, what
10 their date and manner of last entry into the United States was.
11 And, also, they provide information about their passports. And
12 then, lastly, at the very bottom, they would indicate what
13 their native language was, what level of English fluency they
14 have, and whether they speak any other languages fluently.

15 Q. Okay. Now, looking at the first half of page 2, what
16 information is generally provided in this section?

17 A. Okay. In this section, if the applicant is married, they
18 would indicate that they are married by providing information
19 about their spouse. Specifically their name, the date of their
20 marriage, their spouse's date of birth, and place of birth, as
21 well. They would indicate, similarly, their nationality, what
22 their gender is, whether they are in the United States, and
23 what their manner of entry and place of arrival in the United
24 States was.

25 And then, also, they're asked to indicate if they have

E300LLIU3

Caudill-Mirillo - direct

1 ever been in any type of immigration proceeding before.

2 Q. Okay. Focusing on the second half of page 2, what
3 information is provided in this section.

4 A. If the applicant has any children, they are asked to
5 indicate that they do. And, also, the number of children they
6 have. And similar to their spouse, they are supposed to
7 provide basic biographic information on all of their children,
8 including their marital status, their name, date of birth,
9 place of birth, nationality, gender, whether, again, the child
10 is in the United States, how they how they entered the United
11 States, when they arrived, and what their current immigration
12 status is, or any involvement they have had in immigration
13 proceedings.

14 Q. Looking at the first half of page 3, what information is
15 generally provided in this section?

16 A. The entirety of page three are just additional blocks for
17 the applicant to provide information on any additional children
18 they have. So if they have more than just the one child, then
19 they would enter information about all of their children on
20 this page.

21 Q. Okay. And just for the benefit of the jury, I'll show the
22 second half of page 3. We have already discussed -- now
23 turning to page 4, looking at the first half of that page, what
24 information is generally provided on this page?

25 A. This information is more background information on the

E3O0LLIU3

Caudill-Mirillo - direct

1 applicant. It gives us a better sense of who the applicant is
2 and where they are from. So the first question is asking them
3 to provide the address where they lived immediately before they
4 arrived in the United States, including the street, the
5 country, and the dates that they lived there.

6 Question two asks them to provide information on all
7 of their residences for the last five years. Again, this
8 assists in giving the asylum officer some indication of where
9 they have lived and what country they may have traveled
10 through.

11 Number 3, you can start to see information where the
12 applicant is supposed to provide a comprehensive overview of
13 their education, every level, indicating what type of school it
14 was and, also, where that school was and, also, the states of
15 attendance.

16 Number 4, they are asked to provide information about
17 their employment over the last five years, indicating the
18 employer, where the employer was located, and their occupation,
19 again, providing the dates that are relevant to those
20 positions.

21 And then the bottom section is where they will
22 indicate, identify their parents and any siblings they have.
23 Also where those individuals were born. And, lastly, where
24 they currently reside if they, in fact, are not deceased.

25 Q. Okay. Top half of page 5, what information is provided in

E300LLIU3

Caudill-Mirillo - direct

1 this section?

2 A. This is the section where the applicant will actually start
3 to provide information to my agency about the basis for their
4 case, why they are seeking asylum in the United States.

5 So, question one, here is where the applicant
6 indicates why, what are the five grounds that they are seeking
7 asylum protection for.

8 I mentioned earlier that the person must have
9 experienced past persecution or fear of persecution in the
10 future. That harm has to occur for one of five protected
11 reasons, which are race, religion, nationality, political
12 opinion, or membership in particular social group. Also
13 something called torture convention listed here. That is
14 actually a separate type of immigration benefit, so that's not
15 specific to asylum.

16 Question two, here is where the applicant would start
17 to provide information about the past harm or threats of harm
18 that they have experienced, both themselves, family, or close
19 friends and associates. And they are supposed to detail those
20 incidents and what types of threats may have occurred.

21 Q. And what about the last section?

22 A. In the last section, this is where the applicant is looking
23 forward to the future and saying whether they, in fact, fear
24 harm in their home country in the future.

25 So they are supposed to explain what type of fear,

E300LLIU3

Caudill-Mirillo - direct

1 what type of harm they fear would occur if they would return,
2 who they think would actually mistreat them, and whether and
3 why they think that that would happen.

4 Q. Okay. Now, looking at the top half of page 6, what
5 information is provided on this section, generally?

6 A. So, again, this information again starts to go into some of
7 the legal criteria for asylum, and whether the person is in
8 fact eligible to receive asylum.

9 So the first question is whether the applicant, or any
10 family members, have ever been accused or charged or detained
11 in any way within any country. So this could both go to why
12 they are afraid to return to their home country and it also
13 could indicate whether they have, in fact, committed a crime
14 that would make them not eligible to receive asylum protection.
15 This second -- well, I guess it is 3(a) on this. In this view,
16 is where the applicant indicates whether they have been
17 involved in any type of organizations. This could be political
18 parties, labor unions, religious organizations, or some type of
19 military or guerilla organization. Again, this is both to
20 address whether they may be involved in some type of political
21 activities that makes them need asylum. It also could indicate
22 that they are a member of some type of organization that would
23 make them ineligible for asylum.

24 Q. And looking at the second half of that same page, what
25 information is generally provided here?

E3O0LLIU3

Caudill-Mirillo - direct

1 A. 3(b). This is where the applicant would indicate if they
2 continue to participate with any type of organization that was
3 addressed in the previous question.

4 They also will indicate whether any family members are
5 involved in those organizations. Again, both the answers to
6 those questions could both go to whether they in fact are
7 eligible for asylum, or if they have some type of association
8 or activity that would make them ineligible for asylum.

9 Oh, I think there was one more, sorry.

10 So, the last question, number 4, is where it discusses
11 whether the applicant fears that they would be tortured in
12 their home country. Torture is a form of persecution, so that
13 would go to establishing their case. It also goes to the other
14 type of immigration benefit that I mentioned earlier.

15 Q. Okay. Looking at the first half of page 7, what
16 information is generally provided in this section?

17 A. Question one is where the applicant will indicate whether
18 any close relatives of theirs have ever applied for asylum or
19 received some type of similar protection in the United States.
20 Again, this could go to establish that they, in fact, also are
21 at risk of some type of harm in their home country.

22 Question 2(a) indicates where they are supposed to
23 indicate whether they traveled through other countries on their
24 way to the United States.

25 Question 2(b) goes to whether the applicant or any

E300LLIU3

Caudill-Mirillo - direct

1 close family members have received any type of immigration
2 status in another country.

3 And in that next block, that is where they would list
4 the immigration status they had, in what countries they were
5 offered some type of status, too. And then, lastly, this
6 number 3 asks whether the applicant, spouse, or children have
7 ever basically committed an act or assisted in an act of
8 persecution.

9 Under the law, if someone has either assisted or
10 committed an act of persecution and another person was harmed
11 and, in fact, persecuted, they automatically are no longer
12 eligible to receive asylum protection.

13 Q. Turning to page 8, and focusing on the top half of that
14 page. What information is generally provided in this section?

15 A. At the top, it asks if the applicant, when they, after they
16 left their country, did they ever return. This is just to
17 indicate whether, in fact, if the applicant returned, it gives
18 the officer an opportunity to ask why they returned, what were
19 the circumstances of the return. Sometimes it may lead to
20 questions, either whether the person is credible or maybe in
21 fact, though they actually are afraid that something might
22 happen in their country, they may in fact just be wrong,
23 because those things have not happened to them, despite having
24 returned. So this is where they would indicate if they
25 returned, how long they returned, and what was the purpose of

E300LLIU3

Caudill-Mirillo - direct

1 that trip was.

2 The next question asks the applicant to indicate
3 whether they are filing for asylum a year after their arrival.
4 That is because they are supposed to, under the general rule,
5 apply within a year of their entry, though there are some
6 exceptions.

7 Q. And looking at the last question on that page, what
8 information is generally provided in response?

9 A. Question 6 asks whether the applicant, or any family member
10 included on the application, has ever committed a crime, been
11 arrested for a crime, charged or convicted or sentenced for a
12 crime in the United States. Though, generally speaking,
13 committing a crime does not make someone ineligible for asylum,
14 there are certain types of crimes that would make someone
15 ineligible to receive asylum if they are very serious crimes.
16 This is where the person would indicate if there are any
17 situations applicable to that. And they would be expected to
18 provide additional documentation to establish whether, in fact,
19 that would bar them from a grant of asylum or not.

20 Q. Okay. Focusing on the top part of page 9, what information
21 is being explained on this form?

22 A. What's being explained on the top part of this form is
23 essentially that this application is being submitted under some
24 type of oath. And that there are both criminal and civil
25 penalties that are applicable, if someone is found to have

E3O0LLIU3

Caudill-Mirillo - direct

1 submitted false information or an entirely fraudulent
2 application. So this, in fact, just is essentially the oath
3 that applicant would be taking. It cites the law that is
4 applicable. And, also, notifies them that if they are found to
5 have filed some type of frivolous application, that they may no
6 longer be eligible for certain types of immigration benefits.

7 The applicant is supposed to print their name and also
8 write their name in their native alphabet, if it is other than
9 an English-type alphabet that is used, indicating that they
10 have read that warning. And then the next part, it says did
11 your spouse, parent, or children assist you in completing this
12 application.

13 If a spouse, parent, or child did, they are supposed
14 to check yes and also provide information on that individual,
15 including identifying their relationship. And then it goes on
16 to ask if someone other than the spouse, parent, or child
17 helped him fill out the application, they are supposed to
18 identify that person. And then, also, if it is, for example,
19 an attorney, they would sign their name here -- I'm sorry, no,
20 they would not. The applicant would sign their name,
21 indicating, yes, that they are aware.

22 Q. And focusing on section (e) of that page, what information
23 is being explained here, and what information is generally
24 provided here?

25 A. Okay. Here, if the applicant -- I'm sorry. If the person

E300LLIU3

Caudill-Mirillo - direct

1 assisting the applicant in filing the application is someone
2 other than a spouse, child, or parent, they also are supposed
3 to read this declaration, which is essentially an oath, that
4 they provided assistance in completing the application, to the
5 best of my knowledge all of the information that was provided
6 on the form is accurate and correct, that they in no way were
7 involved in assisting knowingly completing and submitting a
8 fraudulent application. Then they are supposed to identify
9 themselves and to provide contact information.

10 Q. Are they also supposed to sign the form.

11 A. Yes, they are, I'm sorry, yes.

12 Q. Where is that indicated?

13 A. That is right in the very first block. It says: Signature
14 of preparer.

15 Q. Now, look at page 10, top half of that page. What
16 information is being explained, and what information is
17 typically provided in this section by the applicant?

18 A. So part(f) actually is completed after the asylum interview
19 with the asylum officer. At the beginning of asylum interview,
20 the applicant and the officer will go through this application,
21 through most if not all of the information blocks, to verify
22 that this information is correct. Sometimes it could be just a
23 mistake that was made, or maybe the person moved and the
24 address needs to be updated. They will go through making any
25 additions, corrections, or edits, as necessary.

E3O0LLIU3

Caudill-Mirillo - direct

1 At the end of the interview, the officer is supposed
2 to number all of those changes, have the applicant indicate
3 that those changes are accurate and they are being made with
4 their permission. So they indicate the yes that they are all
5 true, and then they put, if are three changes, one through
6 three were made at the applicant's request to make the
7 application correct and accurate. And then they are supposed
8 to sign and date, with the officer also signing that they
9 understand that these corrections are made under oath and that
10 the entire application is accurate and complete.

11 Q. Okay. And part(g), what information is being explained in
12 that section?

13 A. In this Section, if the applicant were submitting an
14 application in immigration court, or if our office did not
15 grant the case and the case is being heard by the immigration
16 judge, again, they will go through the application to make sure
17 that the application is complete and correct.

18 For example, if the applicant again moved, they might,
19 again, need to update the address. So they will go through the
20 application making sure there are no final mistakes or errors
21 and, again, the applicant will take an oath indicating that any
22 changes are accurate, are made at their request, signifying
23 that the application is complete and accurate.

24 Q. Now, does the entire asylum application have to be
25 completed in English?

E3O0LLIU3

Caudill-Mirillo - direct

1 A. Yes, it does.

2 Q. Can any portions of the application be completed in a
3 language other than English?

4 A. The actual application itself, the form that we just looked
5 at, that has to be completed entirely in English. The
6 applicant, though, in providing evidence in support of their
7 case, may be bringing documents from their home country or may
8 be bringing documents in other languages. And that is fine.
9 If that is the case, they are required to provide a certified
10 translated copy into English.

11 Q. Once an application is completed, how is it filed with the
12 asylum office?

13 A. It would be mailed to one of our service officers. And in
14 our case, in my office, it would be specifically a location in
15 Vermont. The Service Center's job is basically just to receive
16 the application, to input it into our computer data bases, to
17 make sure all of the required information in the blocks are
18 completed, and then submit it to the office with jurisdiction
19 over the applicant's case.

20 Q. How many asylum applications were filed in the Queens
21 office in 2012?

22 A. In 2012, it was approximately 11,100.

23 Q. And approximately what percentage of those applications
24 were granted?

25 A. I think approximately 20 percent.

E3O0LLIU3

Caudill-Mirillo - direct

1 Q. How many of those were granted by an asylum officer after
2 having interviewed an applicant?

3 A. All applicants have to have an interview, so all of those
4 would have been granted after an interview.

5 Q. Well, let me ask it differently.

6 How many were initially denied by an asylum officer,
7 but were later granted after a hearing before an immigration
8 judge?

9 A. I'm sorry, I actually don't know that data. I knew the
10 immigration court's grant rate is higher than our office, but
11 I'm not sure what the discrepancy is between our grant rates.

12 Q. What country were most of the applications filed in 2012
13 from?

14 A. From 2012, the country that, in our office, submitted the
15 country of origin of the individuals who submitted the highest
16 number of applications would have been China.

17 Q. And do you know approximately what percentage of the
18 applications were from China?

19 A. It was seven -- roughly 7,000 applications; so about
20 63 percent.

21 Q. What are the most common reasons asserted by Chinese
22 citizens for requesting asylum?

23 A. Some of the most common would be, for example,
24 participation in what's considered to be unregistered or
25 unsanctioned government church. Sometimes they are called

E300LLIU3

Caudill-Mirillo - direct

1 family churches. In China, people are supposed to attend
2 churches that have been approved by the Chinese government. If
3 they attend churches that are not considered to be sanctioned,
4 they could be subjected to some kind of harm.

5 The one child policy. Generally, in China, only
6 married people can have children. And unless there is some
7 type of exception that is applicable, they are only allowed to
8 have one child. Individuals who violated that, or who oppose
9 it, may be singled out with harm ranging from imprisonment, to
10 fines, to some type of forced abortion or sterilization.

11 Falun gong participation, a movement or a cultivation
12 or lifestyle that's sometimes referred to as falun gong is also
13 another common thing that may occur.

14 And lastly, some type of political opinion. If
15 someone, for example, is activating for democratic reform or
16 some other type of laws that are seen to be against what is the
17 Chinese Communist party's interests, then they could be subject
18 to some type of harm for that reason, as well.

19 Q. Has there been an increase in the number of asylum
20 applications your office has received over the past five years?

21 A. Yes, there has.

22 Q. And do you know, how has that number increased?

23 A. In 2006, our office received approximately 3200
24 applications, total. And as I just mentioned, in 2012, it was
25 11,100.

E3O0LLIU3

Caudill-Mirillo - direct

1 Q. And has there been an increase in the number of
2 applications from Chinese citizens, in particular?

3 A. Yes. And in 2006, it was approximately 1700 applications.
4 In 2012, it was approximately 7,000 applications.

5 Q. After an application for asylum is filed, what happens
6 next?

7 A. The applicant would then be sent to get fingerprinted.
8 They also will receive a notice of their interview date. And
9 will be told which office to appear for their interview at that
10 time. They would report on that time and date. They would
11 report to our office. Their case would be randomly assigned to
12 one of our asylum officers who would review the file, conduct
13 the interview, trying to elicit testimony to determine if the
14 applicant is eligible under the law. Then, ultimately, the
15 asylum officer would make a decision. They would write an
16 actual written decision to support whatever outcome they think
17 is appropriate. And then the case would be processed.

18 Q. Are the interviews conducted by the asylum officer
19 conducted under oath?

20 A. Yes, they are.

21 Q. How many asylum officers work in the Queens office?

22 A. Currently, 47.

23 Q. Do asylum officers receive any type of training to help
24 them conduct the interviews?

25 A. Yes, they do.

E300LLIU3

Caudill-Mirillo - direct

1 Q. What type of training is that?

2 A. Asylum officers are required to attend two different
3 residential trainings which, essentially, means they are sent
4 to the location and go to school full-time for a period of
5 time. One of those is something called Basic which is a.
6 five-week course where the asylum officer learns all of the
7 different types of immigration that our office and that other
8 agencies handle, from asylum just basic overview, to
9 naturalization, to green cards, and other type of immigration
10 petitions.

11 The more substantive course for asylum officers is
12 roughly a seven-week course. At that course, they will learn
13 specific details on asylum law, policy, and procedure. They
14 also receive training on interview techniques. And, lastly,
15 they receive training on how to write written legal decisions.

16 Q. How is it determined which asylum officer will interview
17 which applicant.

18 A. In our office, it is randomly assigned. So the morning of
19 the interview, it is just assigned in order that the applicants
20 appear.

21 Q. And when do the applicants learn who will be conducting
22 their interview?

23 A. They do not learn who is going to interview them until the
24 officer actually comes out and introduces themselves.

25 Q. Now, where do the interviews take place?

E3O0LLIU3

Caudill-Mirillo - direct

1 A. Each asylum officer has their own office that is large
2 enough to conduct the interview. So it's actually in the
3 officer's individual offices.

4 Q. How long does an interview typically last?

5 A. I would say, on average, they are about an hour and a half.

6 Q. In what language are the interviews conducted?

7 A. The officer will ask questions in English. If the
8 applicant does not understand English fluently, those questions
9 will be translated into their native language. After when the
10 applicants respond in their native language, those answers
11 would then be translated into English for the asylum officer's
12 benefit.

13 Q. Who is doing this translation?

14 A. In asylum, the actual applicants are supposed to bring
15 their own interpreters.

16 Q. Okay. Who is allowed to be present for the asylum
17 interview?

18 A. The asylum applicant, certainly. They are supposed to
19 bring any spouse or children that they are including on the
20 application. They may sit outside during the interview and
21 only come in for brief periods of time. If they are
22 represented by an attorney, their attorney is welcome to come,
23 and they have a right to be at the interview. And, also, any
24 interpreters that they bring with them.

25 Q. Okay. Is an applicant required to bring anything with them

E300LLIU3

Caudill-Mirillo - direct

1 to the interview?

2 A. They are required to bring original documents. So often
3 when they submit their application, they will submit a copy of
4 their passport because, obviously, they don't want it to get
5 lost. So they are supposed to bring any original documents
6 that they have in support of their case.

7 Q. And what is the purpose of the interview?

8 A. The purpose of the interview is, first, to verify that the
9 application, as I said, is complete and correct. That's the
10 most important thing. In terms of understanding the case for
11 the officer and making sure that our records are complete, the
12 interview also is supposed to serve as an opportunity for the
13 applicant to identify and explain, in their own words, what
14 happened to them in their country, and why they are afraid to
15 return to their country. It is not expected that the asylum
16 applicant understands all of the nuances of asylum law. That's
17 why the interviews are not adversarial. It is supposed to be
18 the duty of the officer to ask questions to try to elicit
19 testimony from the applicant to make sure that they are, or are
20 not, eligible.

21 Q. What happens after the interview is completed?

22 A. After the interview is completed, the officer would then,
23 again, review their notes. They are supposed to take notes
24 contemporaneous with the interview. They would review their
25 notes, they would review the documentary evidence. They might

E300LLIU3

Caudill-Mirillo - direct

1 do some more country condition research if they feel that they
2 need some more information about what is actually going on in
3 that country. And, then, they are supposed to make a decision
4 on the case. When they make a decision, they need to write an
5 assessment that explains why they, in fact, found that the
6 person was eligible, or why they found that the person was not
7 eligible, going through the legal requirements under the law.

8 That case is then submitted to their supervisor for
9 review. All cases to have be reviewed and concurred upon by
10 their supervisor. The standard is not that the supervisor
11 agrees with the decision, it is that the decision is legally
12 sufficient.

13 What that means, is that the officer asked all of the
14 relevant questions, addressed all of the pertinent areas of the
15 law, and did not lead to any erroneous conclusions.

16 Q. What factors does the asylum officer consider in evaluating
17 an applicant?

18 A. They have to consider credibility. They have to look at
19 the evidence that's being offered in terms of both whether it
20 is internally consistent, whether it is detailed and consistent
21 with country conditions. They have to consider the law and
22 apply any agency policies or procedures that are applicable in
23 certain cases. And, then, that's ultimately the only factors
24 that they should be considering.

25 Q. You mentioned credibility. How is credibility assessed?

E300LLIU3

Caudill-Mirillo - direct

1 A. Credibility is assessed in many ways. Essentially, the
2 officer is looking at the testimony and the applicant's
3 credibility as a whole. What that means is they will be,
4 during the interview, asking questions, asking for details from
5 the applicant about what happened to them in their country,
6 asking for details on specific acts of harm, or who perpetrated
7 those acts of harm, both to get details but, also, to see if,
8 essentially, that the overarching story is consistent
9 throughout the testimony.

10 They also should be looking at documentation. For
11 example, medical reports or any other type of documentation
12 that the applicant provided, to make sure that their testimony
13 is consistent with that documentation.

14 And then, lastly, just their awareness of country
15 conditions, that essentially what the applicant is stating
16 happened is generally consistent with known conditions in that
17 country.

18 Q. So is the truthfulness of an applicant's persecution claim
19 material to the asylum officer's decision as to whether or not
20 to grant a person asylum?

21 A. Yes, it is. Their truthfulness, with respect to the
22 elements of their case, is relevant and material for that
23 determination.

24 Q. Are asylum applications reviewed for potential fraud?

25 A. Yes, they are.

E300LLIU3

Caudill-Mirillo - direct

1 Q. How?

2 A. Every office has a slightly different process. In our
3 office, we have some staff. They are called fraud detection
4 and national security officers. They review applications
5 before they come into our office. They also will gather
6 information from the officers to see if there is any types of
7 trends that are, that they see in the types of cases that we
8 get. They also will make officers aware of any alerts that are
9 going out, whether that be, for example, if someone's
10 travelling through certain countries, there might be an alert
11 set out for that individual or that group of people. And
12 they'll notify the officers of that.

13 Q. What is your office's policy if an asylum officer
14 determines that an applicant lied to them during their
15 interview?

16 A. If an applicant lied during the interview, it would
17 generally -- it would be -- the analysis would be is the lie
18 relevant to their case. So, for example, if they told a lie
19 that they're a great musician and it's totally irrelevant to
20 their case, nobody cares if they got lied to for that. If the
21 person is lying to them about the substance of their case,
22 their identity, how they came to the country, things that
23 happened to them, or things that they are afraid will happen to
24 them, that is material to the case and that would be
25 considered. Ultimately, the officer would be expected to not

E300LLIU3

Caudill-Mirillo - direct

1 grant that case.

2 Q. You mentioned that the decision of asylum officers is
3 reviewed by a supervisory officer. What standard does the
4 supervisor use when reviewing the decision of an asylum
5 officer?

6 A. The standard is legal sufficiency.

7 Q. What does that mean?

8 A. Essentially what it means is the supervisor reviews the
9 case. They make sure that all of the applicable policies and
10 procedures were followed. They look at the notes to make sure
11 that the officer did exercise due diligence in asking all of
12 the appropriate questions following up. If there seemed to be
13 some confusion by the applicant's part, or if it seems like
14 some of the information may not be consistent, the officer is
15 required to clarify with the applicant. They are also
16 reviewing the notes to make sure that they addressed, through
17 questioning, all of the different elements that the applicant
18 would be required to show for eligibility. They also would
19 review the written decision, to make sure that it is in
20 compliance with case law and statutes and regulations, that the
21 asylum officer didn't state, you know, incorrect state law.
22 And then, lastly, that in processing the case, that all of the
23 appropriate paperwork was generated and correctly completed.
24 Q. So if a supervisor agrees that the asylum officer's
25 decision was legally sufficient, what happens next?

E3O0LLIU3

Caudill-Mirillo - direct

1 A. If the supervisor agrees, they will sign off on the
2 decision, and the case will be processed, whether it be a grant
3 referral or what's called a denial. It would just continue to
4 be processed.

5 Q. And if a supervisor believes that the asylum officer's
6 decision is not legally sufficient, what happens?

7 A. First, the supervisor is supposed to speak to the officer
8 and set out what their concerns are. Sometimes it is just a
9 matter of perhaps needing some type of clarification in a
10 written decision, or the issue needs to be addressed a little
11 more clearly.

12 If it is some type of actual substantive disagreement,
13 if the officer still feels their decision is correct, the case
14 would be elevated to me to review as a neutral third party.

15 Q. How many supervisors work in the Queens office?

16 A. We currently have 10.

17 Q. And approximately how many asylum officers are supervised
18 by each supervisor?

19 A. The ratio is approximately four to five officers per
20 supervisor.

21 Q. What happens if an applicant later admits that his or her
22 application is fraudulent?

23 A. Just to clarify, if they admit it is fraudulent before the
24 case is granted, or after the case is granted?

25 Q. After the case is granted.

E300LLIU3

Caudill-Mirillo - direct

1 A. After the case is granted, it would depend upon, I think,
2 the circumstances. The case may continue on through the
3 immigration court processing. If, however, it is determined
4 that we may be able to get some type of additional information
5 from that person, we may put the case on some type of hold to
6 conduct an investigation. Ultimately, the case will still
7 continue to be processed as a referral, it just would depend
8 upon the circumstances and whether there is some value in
9 talking to the person to get additional information for
10 investigative purposes.

11 Q. And what happens if they admit their application is
12 fraudulent before they have been granted asylum?

13 A. Before they have been granted asylum, again, we may have
14 employees that may want to speak to them for investigative
15 purposes but, ultimately, the case would be referred to court,
16 because the case is not credible.

17 Q. And what court are you referring to?

18 A. Sorry. The immigration court.

19 Q. How would an applicant be informed whether he or she has
20 been granted asylum?

21 A. They are informed either in person, or the decision can be
22 mailed to them. In general processing, we make a decision two
23 weeks after the date of interview. The applicant would come
24 back to our office and they would actually be informed in
25 person what the decision would be. There are certain

E300LLIU3

Caudill-Mirillo - direct

1 indications, either because of security background checks or
2 the officer just was unable to make the decision on time, we
3 may have to mail the decision out. The applicant would be told
4 that they don't have to return to our office, they would get
5 their decision in the mail.

6 Q. What happens after an applicant is granted asylum?

7 A. When an applicant is granted asylum, they are immediately
8 given some type of documentation to evidence that they have
9 immigration status, asylum status specifically. At that point
10 in time, they are permitted to live and work indefinitely in
11 the United States. They are informed of the their rights and
12 their ability to petition for spouses or children, unmarried
13 children under the age of 21, if they have not already done so.
14 And then, ultimately, after a year, they can apply for green
15 card and, down the road, several years later if eligible, they
16 can apply for citizenship.

17 Q. And you said they are given some type of document that
18 signifies they have been granted asylum. What type of document
19 is that?

20 A. It's called an I 94 Arrival and Departure Card. It is a
21 little kind of white, rectangular or square card they would put
22 in their passport.

23 Q. Can asylum ever be taken away from a person?

24 A. Yes, it can.

25 Q. And in what instances?

E300LLIU3

Caudill-Mirillo - direct

1 A. We have a process called termination. Essentially, if an
2 applicant is found -- it can be invoked for many reasons, but
3 most commonly found that the applicant was not in fact eligible
4 for they granting of asylum, initially either by fraud or some
5 other means. We would send them a letter indicating to them
6 the reasons that we are seeking termination. We would have an
7 interview with them, or they would have the opportunity to come
8 to our office and explain the circumstances, presumably why in
9 fact what we are saying that their case can be terminated, that
10 we are in fact incorrect. And then, after that, we would make
11 a decision, ultimately.

12 Q. If an applicant's application for asylum has been denied,
13 what happens to the applicant?

14 A. They are, if they are denied, if they are not in
15 immigration status, if they have no other type of immigration
16 status, they would be put in removal proceeding before an
17 immigration judge. At that time, they would have an
18 opportunity to present their asylum case again. If they do
19 have immigration status, for example if they are a student and
20 they have permission to come here as a student, the case would
21 just be denied and they would continue in the immigration
22 status that they already have.

23 Q. Can the denied applicant apply for asylum again?

24 A. Yes, they can.

25 Q. Are there limits on the number of times an applicant can

E300LLIU3

Caudill-Mirillo - direct

1 apply for asylum?

2 A. No.

3 Q. For the asylum applications that are denied by your office,
4 where do these review hearings take place, as you mentioned?

5 A. They take place at New York Immigration Court. The primary
6 location is at 26 Federal. There is another location off xxx
7 Verick Street, but most of our cases I think go to 26 Federal.

8 Q. And who conducts those hearings?

9 A. They are immigration judges, they are administrative law
10 judges.

11 Q. Generally speaking, what takes place at these hearings?

12 A. The environment at immigration court hearing is slightly
13 different. In the asylum context, affirmative asylum context,
14 it is a nonadversarial interview. At immigration court, the
15 government is represented by an attorney who is actively
16 seeking to establish that the person does not have immigration
17 status and should be removed from the country. And during
18 those hearings, there will be several hearings. They will also
19 get a chance to present their case again to testify about why
20 they need asylum. The government attorney will cross-examine
21 them and then, ultimately, the judge, similar to an asylum
22 officer, will make a decision on the law and the regulations.
23 Q. And if, following the hearing, the judge decides to grant
24 asylum, what happens next?

25 A. The applicant would, and in that circumstance would

E300LLIU3

Caudill-Mirillo - direct

1 automatically be entitled to the same benefits that an
2 applicant who filed and was granted at our office would
3 receive. They would have permission to live and work in the
4 United States indefinitely, to petition for spouse and
5 unmarried children under the age of 21, and they would also
6 eventually be eligible to apply for green card and citizenship.

7 Q. And if the judge denies a person's asylum claim at the
8 hearing, what happens?

9 A. If they are denied, at that level, they have the right to
10 appeal. The first level of appeal would be before an
11 administrative body called the Board of Immigration Appeals.
12 If they, again, are not successful at that level, they have the
13 right to appeal to the federal circuits and then, ultimately,
14 if that also was not successful, they do have the ability to
15 petition to the Supreme Court of the United States.

16 Q. How often does that happen?

17 A. That's -- that's pretty rare.

18 Q. Okay. I want to now talk about a couple of people in
19 particular.

20 A. Okay.

21 Q. Are you familiar with an individual named Huai Guo Wu?

22 A. I am not familiar with him, personally. I am familiar with
23 the application that was filed on his behalf.

24 Q. So do you know whether he filed an application?

25 A. He did. He did file an application.

E3O0LLIU3

Caudill-Mirillo - direct

1 Q. And do you know what the current status is of his
2 application?

3 A. That case was not granted by our office. And it was
4 referred to immigration court. I am not familiar with what the
5 status is currently in immigration Court.

6 Q. Okay. Are you familiar with an individual named Lin Chen?

7 A. Yes, I am.

8 Q. And do you know whether or not she has filed an asylum
9 application with your office?

10 A. Yes, she has.

11 Q. And do you know what the current status is of her
12 application?

13 A. That application is on fraud hold. That case was initially
14 referred to immigration court. It was brought to our attention
15 that there was some mandatory paperwork missing from that file.
16 After we received the file back from the Court, we were
17 informed by the FBI that there was some concern that the case
18 might have been fraudulent in the first place. We put the case
19 on a fraud hold, and that is where it currently is, on a fraud
20 hold.

21 Q. And what is a fraud hold again?

22 A. A fraud hold is essentially a blanket term. Essentially,
23 when we become aware there is an application that has some type
24 of fraud associated with it, we will put it on hold while the
25 investigation is pending. Once the investigation is complete,

E300LLIU3

Caudill-Mirillo - direct

1 with all of the information that we have, typically, it would
2 just continue on, on its path, which would be in this case the
3 case would be referred. If there is additional information
4 that we think might be helpful to our agency in identifying
5 other acts of fraud, we may speak to that person. But,
6 ultimately, the case would be continued to be processed as we
7 initially determined.

8 Q. I want to show you what has been marked for identification
9 as government exhibits 505, 507, 508, 513, 517, 518, 519, 521,
10 524, and 525.

11 Do you recognize those documents?

12 A. Just want to flip through them very quickly.

13 MR. FISCHETTI: Can we have one minute to get the
14 applications in order?

15 THE COURT: Do you just need a minute?

16 MR. FISCHETTI: Just a minute.

17 THE COURT: Sure.

18 MR. FISCHETTI: We have them in order, thank you,
19 Judge.

20 THE COURT: You may proceed.

21 BY MR. BOONE:

22 Q. And just let me know when you have finished reviewing them.

23 A. I have just reviewed the first page, yes.

24 Q. Do you recognize those documents?

25 A. Yes.

E300LLIU3

Caudill-Mirillo - direct

1 Q. And what are they?

2 A. These are asylum applications that were filed by
3 individuals with our office.

4 Q. And are those records records that are normally maintained
5 by your office?

6 A. Yes, they do.

7 MR. BOONE: Your Honor, the government offers
8 government exhibits 505, 507, 508, 513, 517, 518, 519, 521,
9 524, and 525 into evidence.

10 THE COURT: Any objection?

11 MR. FISCHETTI: No objection.

12 THE COURT: Mr. Maher, Mr. German.

13 MR. MAHER: No.

14 MR. GERMAN: No.

15 THE COURT: They will be admitted.

16 (Government's Exhibits 505, 507, 508, 513, 517, 518, 519,
17 521, 524, 525 received in evidence)

18 BY MR. BOONE:

19 Q. Have you heard of the law offices of Feng Ling Liu?

20 Yes, I have.

21 Q. And do you know whether or not the law firm ever filed
22 asylum applications with your office?

23 A. Yes, that law firm has filed asylum applications with our
24 office.

25 Q. And approximately how many asylum applications were filed

E3O0LLIU3

Caudill-Mirillo - direct

1 by that law firm between 2007 and 2009?

2 A. Between 2007 and 2009, you said?

3 Q. Yes, 2007 through 2009.

4 A. I believe it was approximately 900.

5 Q. And how does that number compare to the number of
6 applications filed by other law firms around that same time
7 period?

8 MR. FISCHETTI: Objection --

9 MR. GERMAN: Objection.

10 THE COURT: Rephrase that.

11 MR. FISCHETTI: -- to the form of the question.

12 BY MR. BOONE:

13 Q. In comparing the number of applications filed by that law
14 firm during that time period, is that number, on average,
15 higher or less than law firms you also filed during that time
16 period.

17 MR. GERMAN: Objection.

18 MR. FISCHETTI: Objection.

19 MR. MAHER: Objection.

20 THE COURT: Overruled, you can answer.

21 A. It is higher.

22 Q. Have you heard of the law firm Moslemi & Associates?

23 A. Yes, I have.

24 Q. Do you know whether or not that law firm has ever filed
25 asylum application with your office?

E3O0LLIU3

Caudill-Mirillo - direct

1 A. Yes, that law firm has filed with our office.

2 Q. And approximately how many applications were filed by that
3 law firm from 2009 to 2012?

4 A. From 2009 to 2012, approximately 430 applications were
5 filed.

6 Q. And is that number higher or lower, on average, than the
7 number of applications filed by other law firms during that
8 time period?

9 A. I would say, in my personal experience, it is higher.

10 Q. Have you heard of the law firm Bandrich & Associates?

11 A. Yes, I have.

12 Q. Do you know whether or not that law firm has ever filed
13 asylum applications with your office?

14 A. That law firm has filed asylum applications with our
15 office.

16 Q. Approximately how many asylum applications were filed by
17 that firm from 2010 to 2012?

18 A. Approximately 480.

19 Q. And is that number higher or lower, on average, than the
20 number of applications filed by other law firms?

21 MR. MAHER: Objection.

22 Q. During that same time period?

23 MR. MAHER: Objection. And ask for sidebar.

24 THE COURT: Overruled. You can answer.

25 A. Again, in my personal experience, I would say it was

E300LLIU3

Caudill-Mirillo - direct

1 higher.

2 Q. Just want to go back to the something you said earlier.

3 You mentioned that in some instances asylum
4 applications are referred to an immigration court for a
5 hearing. What do you mean when you say they are referred to an
6 immigration court?

7 A. So that's the actual terminology that we use to basically
8 say the person does not have immigration status so, therefore,
9 we are placing them in removal proceedings. Essentially, we
10 say we're referring it to the immigration judge for them to
11 make an ultimate decision if this person should be removed from
12 the country.

13 A removal hearing is where the applicant will, again,
14 raise their asylum application and say they should have the
15 ability to remain in the country because they need asylum and,
16 again, they would put that case on again before the judge.

17 Q. So is it fair to say that an application that is being
18 referred to an immigration court for a hearing, is one that was
19 initially denied by the asylum officer after the interview?

20 A. Yes, that's generally the case; yes.

21 MR. BOONE: No further questions, your Honor.

22 THE COURT: Why don't we take our lunch break.

23 I'll ask you to be back in an hour and 15 minutes, so,
24 approximately 2:25. All right, thanks. Please remember keep
25 an open mind, and don't discuss the case.

E3O0LLIU3

Caudill-Mirillo - direct

1 Thank you.

2 THE DEPUTY CLERK: All rise.

3 (Jury excused)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E3O0LLIU3

Caudill-Mirillo - direct

1 (In open court)

2 THE COURT: Step down. We'll see you at 2:35.

3 (Continued on next page)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E3oWliu4

1 MR. FISCHETTI: Judge, I thought we had an agreement
2 that if one person objects, we all join so that your Honor
3 doesn't have to ask each counsel, unless he withdraws. Unless
4 your Honor doesn't want to do it that way --

5 THE COURT: No. That's fine. You did ask for that
6 previously, and I'm fine with that. Now that it's clear for
7 the record, I'm fine with that.

8 MR. FRANZ: Your Honor, with regard to the objections,
9 if you're not going to hear us at the side bar at the time to
10 just put the reason for our objection on the record, my
11 objection to the elicitation of the testimony about the number
12 of applications filed by the law firm of Feng Ling Liu compared
13 to other law firms, one, I'll handle it on cross-examination,
14 but I don't think it should have come in. I don't think this
15 witness has personal knowledge of it.

16 THE COURT: I think she said, I'll look back at the
17 language she used, she said in my personal experience.

18 MR. FRANZ: Judge, she didn't review these documents.
19 She got this data from other agents. It's classic hearsay, and
20 then she gave an opinion about whether it's higher or lower,
21 and she hasn't been qualified as an expert witness. So, on
22 multiple grounds, her testimony --

23 THE COURT: I don't think you need to be an expert
24 witness to say whether a number was higher or lower. You can
25 cross-examine her about whether or not she had a sufficient

E3oWliu4

1 basis for saying that, but she answered a question about
2 whether the number was higher or lower than other numbers, and
3 she answered based on her personal experience. But you're free
4 to cross-examine her. I don't think that was expert testimony.

5 MR. FRANZ: I don't think, just so you know, her
6 experience, and I'll handle it, her conclusion that it's higher
7 is based upon information that she doesn't have personal
8 knowledge of, so she can say at this point her personal
9 experience, her personal experience of reviewing the hearsay
10 declarations of other officers I don't think would suffice if
11 we were able to challenge that before she elicited the
12 testimony before the jury.

13 THE COURT: I'll give you leeway to question her on
14 cross-examination.

15 MR. MAHER: Your Honor, I want to add additionally
16 that I think it's not proper for the argument I think the
17 government is going to make from that testimony that an
18 increase in numbers applications is somehow correlative to
19 fraudulent activity. There's no correlation at all that this
20 witness can say between the number of applications submitted by
21 a law firm equals fraud, and so that should not have been
22 admitted for that reason as well, and certainly the government
23 should not be able to make arguments later without any showing
24 that there's a correlation between those actual numbers of each
25 client, that that equals fraud.

E3oWliu4

1 THE COURT: You should argue that to the jury.

2 MR. MAHER: But the problem is it's like us grabbing
3 sand because we have an official who has now put forth these
4 numbers that she got somehow and maybe she'll say she looked at
5 a computer screen, or something, but we have no discovery, we
6 have no tangible documents to cross her about those numbers.
7 We have no data spreadsheets on other law firms and what they
8 submitted, but the whole point though, getting past the lack of
9 discovery, you can't say there's a correlation just by the
10 numbers. It could be that these law firms had better contacts
11 in the community, so they have more clients, that they are more
12 adept at getting the people to actually file the claims
13 compared to other law firms. Other law firms are smaller.

14 THE COURT: Those are excellent cross-examination
15 questions and excellent arguments that you're entitled to make.

16 MR. MAHER: I have to make my record, Judge.

17 THE COURT: You have. Thank you very much.

18 One scheduling matter. I told the jury that I would
19 inform them in advance if we're sitting on Fridays. My
20 understanding is that we do not intend to sit this Friday. Is
21 everyone on agreement on that?

22 MR. FISCHETTI: Yes, your Honor.

23 MR. GERMAN: What time, Judge?

24 THE COURT: 2:25. Thank you.

25 (Luncheon recess)

E3oWliu4

AFTERNOON SESSION

2:30 p.m.

THE COURT: Cross-examination.

MR. FRANZ: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. FRANZ:

Q. Good afternoon, Agent.

A. Hello.

Q. My name's Eric Franz. Have we ever met before?

A. No, we have not.

Q. Prior to coming here today, have you testified in any other proceedings?

A. Yes, I have.

Q. You've testified on behalf of the United States Government?

A. Yes, I have.

Q. Have you met with people from the government in preparation for your testimony?

A. Yes, sir.

Q. And did they go through the types of information they would question you about?

A. Yes.

Q. And did they ask you questions?

A. Yes, they did.

Q. Did they give you answers?

A. No, they did not.

E3oWliu4

Caudill- Mirillo - cross

1 Q. I'm sorry. Did you provide them with answers? Excuse me.

2 A. It's okay. Yes, I did. I provided them with answers.

3 Q. And you would meet with them on more than one occasion?

4 A. Yes, I did.

5 Q. You would confer with them via phone or e-mail?

6 A. Yes, I did.

7 Q. That was all in preparation for your testimony?

8 A. Yes, it was.

9 Q. And is it fair to say meeting with the government before
10 testifying, there's nothing wrong with that, is there?

11 A. No.

12 Q. Those prep sessions are okay, correct?

13 A. Yes.

14 Q. Meeting with witnesses before an interview is okay, right?

15 A. Yes.

16 Q. That's what lawyers do?

17 A. It's my understanding, yes.

18 Q. And you did that before coming in here today?

19 A. I did.

20 Q. Before coming in here today, you met with the government,
21 as we've established, right, and you conferred with other
22 people in your office?

23 A. Yes, I did.

24 Q. You testified earlier that approximately 900 applications
25 were filed by the Feng Ling Liu law firm, is that correct?

E3oWliu4

Caudill- Mirillo - cross

1 A. That is correct.

2 Q. Did you personally gather up all of those applications and
3 review each one of them?

4 A. No, I did not.

5 Q. Did you ever have all of those applications in your custody
6 for you to review?

7 A. Personally to review the actual application?

8 Q. Yes.

9 A. Or the computer record?

10 Q. The application.

11 A. I did not review the actual paper applications, no.

12 Q. Did you actually review 900 applications via computer?

13 A. No.

14 Q. Okay. So it's fair to say that you yourself did not
15 compile the data about how many applications the law firm of
16 Feng Ling Liu filed?

17 A. I requested the data. I did not compile the data.

18 Q. As you sit here today, you have no personal knowledge as to
19 the numbers, do you?

20 A. I have the printout. I have the information the computer
21 provided back, but I have not personally looked and verified
22 that information.

23 Q. You didn't make the request of the computer, did you?

24 A. I instructed a member of our staff to make it, yes.

25 Q. So what you received is what somebody else did on your

E3oWliu4

Caudill- Mirillo - cross

1 behalf?

2 A. That is correct.

3 Q. You don't know exactly what data they entered into the
4 computer when they did it, do you?

5 A. I know there's a command and information that they have to
6 input the name, and that's what comes back.

7 Q. Were you present when they ran the search?

8 A. No, I was not.

9 Q. It's a simple search, right?

10 A. Yes.

11 Q. You could have done it yourself?

12 A. I don't believe I have that kind of access.

13 Q. All right. So you don't have the access to data, right?

14 A. To make that personal, input that request, no, I don't
15 believe so.

16 Q. So you didn't extract that data?

17 A. No, sir.

18 Q. So as you sit here today, you don't have personal knowledge
19 as to those numbers, do you?

20 A. I'm not sure I understand your question. You mean
21 personal --

22 Q. As you sit here today, are you the person that entered the
23 questions into the computer and received the information that
24 you claim you received?

25 A. No, I'm not.

E3oWliu4

Caudill- Mirillo - cross

1 Q. And you didn't do that for the Bandrich firm?

2 A. No, I did not.

3 Q. Nor did you do it for any of the other searches, including
4 Moslemi & Associates, correct?

5 A. That is correct.

6 Q. And data that you gave us, is that premised upon just
7 asylum applications at the asylum office interview or also
8 based upon immigration court?

9 A. It is only based on asylum application filings with my
10 office.

11 Q. With your office?

12 A. Yes.

13 Q. Now, if they file it with your office, that could include
14 also going to immigration court, or no?

15 A. No.

16 Q. That's just to file with your office the initial
17 applications?

18 A. Just with our office.

19 Q. And those are applications that in order for them to go
20 through the process, they must have an interview, correct?

21 A. Yes.

22 Q. And as you sit here today, do you have the information --
23 excuse me. Withdrawn.

24 As you sit here right now, do you have personal knowledge
25 of any single interview at the asylum office that Feng Ling Liu

E3oWliu4

Caudill- Mirillo - cross

1 herself attended?

2 A. I'm not aware of any, no.

3 Q. Did you look for that information?

4 A. No, I did not.

5 Q. And you don't have that information?

6 A. No, sir.

7 Q. You mentioned how, by the way, with regard to the computer
8 and the data, where is that underlying data?

9 A. I'm not sure where it's physically stored. But it's a
10 national database that's, I'm not sure where that actual
11 database is housed. I believe it's in Vermont, but I'm not
12 positive.

13 Q. And that data is subject to what people input into the
14 computer?

15 A. Yes, it is.

16 Q. So if there are errors in the actual input of the data,
17 that garbage in gets referred to as garbage out when you get
18 it, correct?

19 A. There -- yes. There are some ways to correct that.

20 Q. Have you done that?

21 A. Have I done which part?

22 Q. Have you corrected any of the inaccuracies?

23 A. I have. Personally, when I've become aware of them, yes.

24 Q. With regard to this case, this investigation, did you
25 correct any of the inaccuracies?

E3oWliu4

Caudill- Mirillo - cross

1 A. No. Not in regards to this case.

2 Q. You testified earlier that approximately 11,000
3 applications were filed in Queens, right?

4 A. Yes, in 2012.

5 Q. In 2012?

6 A. Yes.

7 Q. How many applications were filed since 2006?

8 A. I'm not sure how many total. In 2006 is, it was 3,200, and
9 in 2012, it was 11,000. But I'm not sure what the date, the
10 years were in the middle.

11 Q. So you only can compare 2006 and 2012, you're not aware of
12 2007, 2008, 2009, or 2010?

13 A. I don't have those facts off the top of my head, no.

14 Q. The reason you have the 2006 facts is because the
15 government asked you to get that information?

16 A. Yes.

17 Q. Did anybody ask you to get 2007?

18 A. No.

19 Q. 2008?

20 A. No.

21 Q. 2009?

22 A. No.

23 Q. 2010?

24 A. No.

25 Q. 2011?

E3oWliu4

Caudill- Mirillo - cross

1 A. No.

2 Q. They just wanted you to give us the information on what you
3 claim the numbers would reveal with regard to the applications
4 filed on those various firms, correct?

5 A. I'm not sure why they asked me, but those are the dates
6 that they asked me for, yes.

7 Q. As you sit here today, you don't know if there were over a
8 million applications filed since 2006, do you?

9 A. I know each year it went up, the maximum being 1,100, so I
10 can say no, there weren't a million. But I don't know
11 specifically the range between 3,200 and 11,000, where those
12 numbers fell in those years. It did go up each year
13 incrementally to 11,100 for 2012.

14 Q. And that's just limited to the Queens office?

15 A. Yes, it is.

16 Q. How many law firms practice immigration law in New York
17 City?

18 A. I don't know that information.

19 Q. How many major law firms practice immigration law in New
20 York City?

21 A. I couldn't say.

22 Q. How many different law firms filed applications with your
23 office in Queens over the time frame of 2006 to 2011?

24 A. I'm afraid I don't know that information.

25 Q. The fact is that you don't know how many applications

E3oWliu4

Caudill- Mirillo - cross

1 Wilens & Baker filed, do you?

2 A. No, I don't.

3 Q. You don't know how many Spar & Bernstein filed, do you?

4 A. No, I don't.

5 Q. Or any of the other major immigration law firms in the
6 city, do you?

7 A. I don't know the number, no.

8 Q. But your testimony before was that the 900 was more than
9 the average for other law firms, correct?

10 A. That is correct.

11 Q. But you don't know if there were other law firms that filed
12 more than that because you never checked that data, did you?

13 A. I know from personal observation being an officer and
14 supervisor, on each of those applications they list who the
15 attorneys are, and by my personal experience and that shared by
16 other members of my office, that would be, as I said, my
17 personal observation. But I don't know the data.

18 Q. You don't know the data?

19 A. I don't have the specific numbers, no.

20 Q. So the 11,000 that were filed in 2011 --

21 A. '12.

22 Q. '12, excuse me, did you go through each and every one of
23 them?

24 A. No, sir.

25 Q. So you don't know which law firms filed those applications?

E3oWliu4

Caudill- Mirillo - cross

1 A. No, sir.

2 Q. You don't know the breakdown?

3 A. That is correct.

4 Q. You just have your personal belief right now?

5 A. Yes --

6 Q. Without any data to back that up, correct?

7 A. Only my personal observations, yes.

8 Q. No data?

9 A. That is correct.

10 Q. You knew you were coming in here to testify today, correct?

11 A. Yes, sir.

12 Q. And you knew the government was going to ask you a series
13 of questions, correct?

14 A. Yes, sir.

15 Q. And you knew they were going to ask you about the number of
16 applications that were filed during those years from the law
17 firms, right?

18 A. That is correct.

19 Q. And you got that information at their request?

20 A. Yes, sir.

21 Q. But the underlying data regarding other law firms you
22 didn't get, correct?

23 A. That is correct.

24 Q. But you knew they were going to ask you what your personal
25 view was towards how many applications were filed at the Feng

E3oWliu4

Caudill- Mirillo - cross

1 Ling Liu law firm, correct?

2 A. That is correct.

3 Q. So you were Honor comfortable giving that personal
4 information even though you don't have the underlying data,
5 correct?

6 A. That's correct.

7 Q. Thank you. You said there's a 20 percent grant rate for
8 asylum applications?

9 A. Yes. An average, yes.

10 Q. And that means --

11 A. I --

12 Q. -- by math, 80 percent are denied?

13 A. That is correct.

14 Q. That doesn't mean that 80 percent are a fraud, does it?

15 A. Absolutely not.

16 Q. Doesn't mean 80 percent are fake, does it?

17 A. That's true.

18 Q. It just means 80 percent weren't approved because people
19 either failed to show up at a hearing, correct?

20 A. Yes.

21 Q. They didn't give a statement that seemed credible, correct?

22 A. Yes.

23 Q. They didn't give a statement that complied with the laws
24 for asylum, right?

25 A. That is correct.

E3oWliu4

Caudill- Mirillo - cross

1 Q. Because there are a lot of parameters for what they can
2 apply for and what they have to accomplish in their factual
3 recitation, correct?

4 A. That is correct.

5 Q. And so somebody might be telling the truth, but their claim
6 doesn't rise to the level of meeting an asylum application to
7 be granted, correct?

8 A. That's true.

9 Q. Now, with regard to an asylum officer's training, you
10 mentioned there's two mandatory training sessions?

11 A. Yes.

12 Q. And collectively, you add them all up, they span several
13 months?

14 A. Yes.

15 Q. And you went through it, correct?

16 A. I did.

17 Q. And going through it, did you learn about how to judge the
18 credibility of a witness?

19 A. Yes.

20 Q. Did you learn that you needed to probe for details?

21 A. Yes, I did.

22 Q. You needed to compare details?

23 A. Yes, I did.

24 Q. And that remains true, that in evaluating somebody's
25 credibility you look at the details behind their story?

E3oWliu4

Caudill- Mirillo - cross

1 A. Yes, that's true.

2 Q. One of the purposes for the interview is to go beyond the
3 broad strokes of the story, to ask about details, right?

4 A. Yes.

5 Q. Because when the details don't match up for a story, it
6 could be a lie?

7 A. It could be, yes.

8 Q. And there's a phrase, the devil's in the details. Are you
9 familiar with that phrase?

10 A. Yes, I am.

11 Q. And When you judge somebody's credibility if their details
12 don't match up, it starts to make you think that even though
13 they got the big picture right, because their details don't
14 match up, they have to be lying?

15 A. It does raise the question. You still have to continue to
16 probe.

17 Q. You continue to probe, but it's a subjective decision as to
18 whether or not you find them credible, right?

19 A. No. I would disagree with that.

20 Q. The determination about whether or not to grant asylum, is
21 that subjective or objective?

22 A. That's objective.

23 Q. Remember testifying in a matter in this courthouse a couple
24 of months ago?

25 A. I was not in this courthouse.

E3oWliu4

Caudill- Mirillo - cross

1 Q. I'm sorry.

2 A. It's okay.

3 Q. Across the street.

4 A. Yes, I did.

5 Q. Give me one moment. In order for an asylum officer to make
6 a determination, it's like a criminal case where somebody's
7 weighing the credibility of a witness, right?

8 A. Yes.

9 Q. And the evaluation, I think you testified earlier, was it's
10 no more subjective than in a criminal case, right?

11 A. I -- earlier today or previously?

12 Q. Previously.

13 A. On a different occasion, yes, I did say that.

14 Q. So there's a level of subjectivity that goes to weighing
15 somebody's credibility, right?

16 A. I wouldn't say subjectivity. I would say that there is,
17 the officer has some independent discretion in terms of how
18 much they need to probe. But certainly it has to be what they,
19 their expectations are in terms of details and the consistency
20 and the ability of the applicant to provide some kind of
21 explanation for an inconsistency. It has to be reasonable.
22 They can't place unreasonable expectations on the applicant for
23 details or for consistency.

24 Q. But in evaluating someone's testimony, I would say if
25 somebody testified that the sky was blue on Monday but they

E3oWliu4

Caudill- Mirillo - cross

1 testified another time that the sky was green on Monday, that
2 would be inconsistent, right?

3 A. That's true.

4 Q. And objectively, that's an inconsistency, correct?

5 A. Yes.

6 Q. And objectively, if that was the issue to be resolved, you
7 might find that person not credible because objectively, their
8 answers differed?

9 A. Yes.

10 Q. Now, if a witness, in testifying, you have the opportunity
11 to observe their demeanor, is that right?

12 A. That's correct.

13 Q. And in observing their demeanor, their failure to make eye
14 contact could be an issue which could cause somebody to find
15 them not credible?

16 A. We are generally as a policy as an agency discouraged from
17 using demeanor because in many cultural contexts, for example,
18 the example of looking people in the eyes, in some cultures
19 that's seen to be disrespectful. So we're often encouraged not
20 to use demeanor in the context of interviews. But it is
21 available and some officers in extreme circumstances will use
22 it.

23 Q. It's not forbidden?

24 A. No. It's not forbidden, it's just discouraged.

25 Q. Discouraged?

E3oWliu4

Caudill- Mirillo - cross

1 A. Discouraged.

2 Q. But if somebody doesn't maintain eye contact, that can be a
3 factor and an individual asylum officer can rely on it, can it
4 not?

5 A. Not that factor solely, no. There would, that would be not
6 be legally sufficient.

7 Q. That would be an individual factor. We're going to talk
8 about the collective factors shortly, but individual factors,
9 there's the inconsistency in their inherent statement compared
10 to what they say, right? Then you compare documentary
11 evidence, correct?

12 A. Yes.

13 Q. If there's an inconsistency there, that could be a factor,
14 right?

15 A. Yes.

16 Q. If somebody doesn't maintain eye contact, that could be a
17 factor, correct?

18 A. It could be, yes.

19 Q. If somebody just rattles off what appears to be a rehearsed
20 statement, that could be a factor, right?

21 A. Can be, yes.

22 Q. Also, if somebody can only rattle off a statement in a
23 certain time manner as opposed to giving details out of order,
24 that's also a factor, correct?

25 A. It could be.

E3oWliu4

Caudill- Mirillo - cross

1 Q. Because officers are looking to see whether or not the
2 applicants that are getting interviewed have subscribed to
3 memorization of their story, right?

4 A. Yes.

5 Q. So there's no one factor that you look at, but you look at
6 all of it?

7 A. That's correct.

8 Q. Including demeanor?

9 A. Yes.

10 Q. And you can look at somebody who is twiddling with their
11 fingers or twitching during the interview when they get hard
12 questions, right?

13 A. You could look at any number of demeanor factors. Again,
14 it's, you're supposed to look at the picture of the whole, but,
15 yes, if an officer found that that could be some indicator of
16 demeanor, such as whenever they seemed to not know the answer
17 to a question if they seemed to continue to twiddle their
18 fingers or behave in a way that seems abnormal but only when
19 they couldn't answer a question, it might raise some
20 credibility issues, yes.

21 Q. And it might be more important to some officers than
22 others?

23 A. Perhaps.

24 Q. Which means it's somewhat subjective because some officers
25 might evaluate somebody more on their demeanor than another

E3oWliu4

Caudill- Mirillo - cross

1 officer, is that right?

2 A. I, I'm not sure I can answer that question because I
3 haven't worked with every officer. But certainly, some
4 officers may find some evidence of credibility or some factor
5 more compelling than others, certainly, yes.

6 Q. These interviews, they're thorough interviews, correct?

7 A. I would say so, yes.

8 Q. I'm talking about the interview that happens with the
9 asylum officer, correct.

10 A. Yes.

11 Q. Those are thorough interviews that go one and a half to two
12 hours?

13 A. Yes, they should.

14 Q. Before you get to the interview, before that, the applicant
15 has to fill out paperwork, right?

16 A. That's correct.

17 Q. I believe you established it has to be in English, correct?

18 A. Yes.

19 Q. And a lot of people, let's just talk about people from
20 China for a moment that come in and they want to apply for
21 asylum, a lot of them are not English-speaking individuals, is
22 that right?

23 A. Yes.

24 Q. A lot of them are uneducated?

25 A. I am not, I'm not certain to say what the percentage is,

E3oWliu4

Caudill- Mirillo - cross

1 but some of them are uneducated, yes.

2 Q. Are some of them peasants?

3 A. I'm not sure. What do you mean by peasants? Who would you
4 include in peasants?

5 Q. I would include migrant farm workers who haven't received
6 an education formally.

7 A. Yes. Many of them are farmers, yes.

8 Q. And some of them are unsophisticated?

9 A. Some may be, yes.

10 Q. And the Chinese culture is a completely different culture
11 than the American culture, would you agree with that?

12 A. That's true.

13 Q. So these people that have come from China, some of them are
14 not educated?

15 A. Some of them, yes.

16 Q. They come from a completely foreign culture?

17 A. That's true.

18 Q. They're here to apply for asylum based upon laws of the
19 United States that you're sure they weren't educated on in
20 China, correct?

21 A. That's true.

22 Q. That's also a foreign process to them?

23 A. Yes, it is.

24 Q. In fact, it's a foreign process to a lot of people, which
25 is why you're here today?

E3oWliu4

Caudill- Mirillo - cross

1 A. Exactly, yes.

2 Q. Now, they come in, it doesn't matter how they get here,
3 correct?

4 A. That is true.

5 Q. Whether they come in in a shipping container or they come
6 in first class on American Air Lines, it doesn't matter to the
7 asylum officer, right?

8 A. No, it doesn't matter.

9 Q. So if somebody comes into the asylum office and they say I
10 snuck into the country by walking through a tunnel underneath
11 the Mexican border and I got here illegally, that doesn't
12 matter for the asylum application, right?

13 A. No, it doesn't.

14 Q. Going back, they go to a law firm, or they can apply on
15 their own, correct?

16 A. I'm sorry? Repeat.

17 Q. In order for an applicant to apply, they can do it on their
18 own, they can do it with the use of a law firm, they can do it
19 with a clinic, right?

20 A. Yes.

21 Q. A family member can help them if they want?

22 A. Yes.

23 Q. No restrictions on that?

24 A. No restrictions.

25 Q. But it has to be in English?

E3oWliu4

Caudill- Mirillo - cross

1 A. Yes, it does.

2 Q. And then after that paperwork is put together, it's not
3 just the application, which they have to sign under oath,
4 correct?

5 A. Yes.

6 Q. How many times do they sign under oath in that application,
7 when all is said and done?

8 A. On the application, they sign twice. They also were
9 administered an oral oath when they appear for the interview
10 and they also sign a piece of paper at the interview indicating
11 that they were given the oral oath.

12 Q. That's four oaths to tell the truth, right?

13 A. That's correct.

14 Q. And that's before they might even get to an immigration
15 judge?

16 A. Yes.

17 Q. Which then another oath would be administered, correct?

18 A. Yes.

19 Q. That's five?

20 A. At least.

21 Q. And they have to testify before the immigration judge, that
22 would be six?

23 A. I would assume. I'm not sure how many times. I'm not sure
24 what their procedures are.

25 Q. Well, there is written --

E3oWliu4

Caudill- Mirillo - cross

1 A. Yes.

2 Q. -- oath, that goes before the immigration judge?

3 A. Yes.

4 Q. That would be No. 5?

5 A. I think so.

6 Q. Then if they testify before the immigration judge, you're
7 not familiar with anybody going before an immigration judge and
8 testifying without being under oath, right?

9 A. No.

10 Q. That's six oaths right there?

11 A. At least.

12 Q. And that's before we get to the Board of Immigration
13 Appeals or the Circuit Court, right?

14 A. Yes.

15 Q. So they have these six oaths and they all warn them not to
16 lie?

17 A. Yes.

18 Q. Right? And, in fact, there's a warning on page --I think
19 it's nine of Exhibit 1. Do you have Exhibit 1 there?

20 A. I have, I don't have that exhibit, but I do have an asylum
21 application in front of me and I can look at it.

22 Yes, it is on page nine.

23 Q. And it says if you file a frivolous application, you will
24 be permanently ineligible for any benefits under the
25 Immigration and Nationality Act, correct?

E3oWliu4

Caudill- Mirillo - cross

1 A. Yes.

2 Q. That says will be. Is that those words?

3 A. I'm --

4 Q. Will be permanently ineligible?

5 A. Yes, it does.

6 Q. Not shall, not may be, right?

7 A. Yes.

8 Q. Okay. So if you file a fraudulent application, you can be
9 permanently ineligible from ever seeking asylum benefits again,
10 right?

11 A. That's correct.

12 Q. And that says there will, which is mandatory according to
13 this warning what they sign?

14 A. Yes.

15 Q. Now, after they sign the documents, the application, they
16 also have to get documentary evidence together to support their
17 application, correct?

18 A. It's not required, but they are under the law, they are
19 generally expected to provide documentation that's reasonable
20 for them to be able to provide, yes. Testimony alone is
21 sufficient, unless the officer feels that documentary evidence
22 is available and it's reasonable to expect that the applicant
23 could provide it.

24 Q. So it's not required?

25 A. It's not required.

E3oWliu4

Caudill- Mirillo - cross

1 Q. There's no need for anybody to take a risk of falsifying
2 documents because it's not required, correct?

3 A. That is, that is correct.

4 Q. If they choose to put in documentary evidence, that
5 accompanies the packet for when it's finally submitted, is that
6 correct?

7 A. Yes.

8 Q. And once it's submitted it doesn't go directly to an asylum
9 officer, does it?

10 A. No.

11 Q. It goes to your fraud detection unit?

12 A. I'm sorry? When it's filed --

13 Q. Doesn't it get screened for fraud?

14 A. Yes. Once it gets to our office, yes, it would be
15 preliminarily screened for fraud. Yes.

16 Q. It gets screened for fraud by people that are trained in
17 how to detect fraud in the applications and the documents,
18 correct?

19 A. Yes.

20 Q. And including that, in that is looking at documents to see
21 if they appear to be originals or if they were doctored in some
22 way?

23 A. Well, they are looking for evidence that they could be
24 doctored. However, in applications, they generally provide
25 copies so they wouldn't be looking at originals at that point

E3oWliu4

Caudill- Mirillo - cross

1 in time.

2 Q. They have the right to ask for originals, don't they?

3 A. Yes, after. At the time of the interview, yes.

4 Q. But there's no limitations, if a fraud detection officer
5 decides he want to investigate whether an application is
6 fraudulent, he can do so, correct?

7 A. Well, again, he would not have the, he or she would not
8 have the original document at the time to prescreen before the
9 interview. It would have to be brought to them by the officer.

10 Q. Well, the screening officer, the fraud detection officer,
11 gets the application before it goes to an asylum officer,
12 correct?

13 A. Yes, but the originals are not submitted at that time.

14 Q. But when he gets the application, if the fraud detection
15 officer wants to look into the application, he can do so,
16 correct?

17 A. Yes.

18 Q. There's no restrictions on whether or not he can
19 investigate if he suspects fraud, right?

20 A. No. He can investigate.

21 Q. And Washington, D.C. has a lab, a forensic lab, that
22 documents can be sent to by the immigration service to
23 determine whether or not they are accurate and authentic and
24 not fraudulent, isn't that right?

25 A. Yes, they do.

E3oWliu4

Caudill- Mirillo - cross

1 Q. So if the fraud detection officer wants to send documents
2 down there, he can do that?

3 A. Yes, he can.

4 Q. The asylum officer can do that as well?

5 A. Yes, they can.

6 Q. An immigration judge can do that?

7 A. Yes, they can.

8 Q. So there are a lot of controls in place and resources that
9 the federal government has to investigate fraudulent or
10 suspected fraudulent applications, is that correct?

11 A. We do have resources available. However, I would point out
12 that it is a sufficiently understaffed and under-resourced lab,
13 so, practically speaking, we actually are really limited in
14 terms of our use of it because it's one lab that's used for the
15 entire country, and as you can imagine, there are thousands, if
16 not tens of thousands, hundreds of thousands, of immigration
17 applications that are filed each year.

18 Q. What's your title again, deputy director?

19 A. Yes.

20 Q. You supervise how many people?

21 A. Directly I supervise 12. Indirectly, roughly 50 or 60.

22 Q. Have you had occasion to have people under you say, Hey, we
23 have too much work, I think this is a fraud, but let's not
24 investigate it, we'll just let it go? Does that happen?

25 A. No.

E3oWliu4

Caudill- Mirillo - cross

1 Q. Okay. So you're working hard and you have a lot of cases,
2 right?

3 A. Yes.

4 Q. And you say you're understaffed correct?

5 A. Yes. My office specifically, yes.

6 Q. But you're not letting things go that you think are
7 fraudulent, are you?

8 A. We are trying not to, no.

9 Q. So some things slip through the cracks, right?

10 A. Unfortunately, yes.

11 Q. So you supervise people like asylum officers and their
12 supervisors, right?

13 A. Yes, I do.

14 Q. And sometimes they make mistakes, correct?

15 A. Yes, it happens.

16 Q. And sometimes you make a mistake?

17 A. Yes, it has happened.

18 Q. Because when you're dealing with a lot of volume, sometimes
19 you don't pick up on every mistake somebody under you might
20 have made, is that correct?

21 A. That's true.

22 Q. And that happens in your office, and that's true today,
23 correct?

24 A. I think that happens in every office, so, yes.

25 Q. I do, too. Thank you.

E3oWliu4

Caudill- Mirillo - cross

1 Now, as far as the standard for screening for fraud, if
2 there are any issues or any indication that there's a fraud,
3 the assigned officer's notified, isn't that right?

4 A. They're alerted that there could be an issue and asked to
5 probe, for example, if they think that the document or there
6 might be something suspicious, the officer might be told just
7 ask the questions about this. But in terms of the actual
8 adjudication, the fraud detection and national security
9 officers do not get involved in the outcome of the case.

10 Q. My question is if there's any indication of fraud by the
11 screening officers, they notify the asylum officer. Isn't that
12 right?

13 A. That's true, yes.

14 Q. So you don't say I don't care, they point out that
15 information?

16 A. Yes.

17 Q. And that's the asylum officer's job as well, right?

18 A. Yes.

19 Q. So all along the way, there are multiple mechanisms and
20 personnel in place that are trained to detect fraud, correct?

21 A. That's true.

22 Q. But yet sometimes it slips through the cracks?

23 A. It can happen.

24 Q. Despite your best efforts?

25 A. Yes.

E3oWliu4

Caudill- Mirillo - cross

1 Q. When somebody who doesn't speak English goes to an asylum
2 interview, do they bring an interpreter with them, or is one
3 provided for them?

4 A. They bring the interpreter with them, and we also have a
5 monitoring service that will listen in on the interview to
6 ensure that the monitor, the interpreter is of a sufficient
7 quality and that the interpretation is accurate.

8 Q. So in addition to the applicant being there speaking,
9 there's their translator there with them, correct?

10 A. That is true, yes.

11 Q. Then there's the judge, the asylum officer?

12 A. Yes.

13 Q. And he calls a monitoring agency whose sole job is to
14 listen and make sure that the translations that are occurring
15 are accurate, correct?

16 A. Yes.

17 Q. And that's done whenever an interpreter is used because --
18 withdrawn.

19 The monitoring agency, if they have a discrepancy with
20 something the interpreter translated, they must inform the
21 hearing officer, correct?

22 A. Yes.

23 Q. And the hearing officer then makes inquiry about that,
24 correct?

25 A. Yes. That's what's supposed to happen, yes.

E3oWliu4

Caudill- Mirillo - cross

1 Q. And this is something that you have a policy and procedure
2 for at immigration?

3 A. Yes.

4 Q. And that's because there's been problems in the past where
5 interpreters weren't doing a good job, right?

6 A. Yes.

7 Q. And this is the way of safeguarding that all translations
8 are accurate?

9 A. Yes.

10 Q. And if there's a problem with the translation, that could
11 cause the interview to come to a grinding halt, right?

12 A. Yes.

13 Q. And then, there's discussion to see whether or not there
14 was a mistake, if there needs to be a correction, right?

15 A. Mm-hmm. Yes.

16 Q. And if the issue is resolved with an innocent mistake, you
17 move on, right?

18 A. Yes.

19 Q. If the issue's resolved that the interpreter was
20 deliberately lying or saying words that weren't accurate, that
21 interpreter can be disciplined, correct?

22 A. Yes.

23 Q. And they can be banned, yes?

24 A. Yes.

25 Q. And you've banned, I believe, three to four interpreters a

E3oWliu4

Caudill- Mirillo - cross

1 month; you send out a letter saying that these people should no longer be permitted to interpret at these hearings. Correct?

3 A. I'm not sure the number, but, yes, I regularly have signed those letters.

5 Q. Because the safeguards in place detected the translator not doing their job accurately, right?

7 A. Yes.

9 Q. And the translators themselves before being interviewed, they have to take an oath?

10 A. Yes.

11 Q. They are given warnings and instructions about how they're to interpret?

13 A. Yes, that's correct.

14 Q. At the end of the interview, the monitoring agency is asked to basically give their review of whether or not the interpretation was accurate or not, yes?

17 A. Yes.

18 Q. The monitoring agency also, if there's any inconsistency in what's translated, they can stop the interview and notify the hearing officer at that moment in time?

21 A. Yes, that's correct.

22 Q. And at the very end, there's also another oath by the translator that they did it accurately?

24 A. Yes.

25 Q. So there are safeguards in place all along the way to make

E3oWliu4

Caudill- Mirillo - cross

1 sure that the translations are accurate, correct?

2 A. Yes. That's what they're designed to do, yes.

3 Q. At the end of the interview, the hearing officer will issue
4 a written report of findings, correct?

5 A. The hearing officer being the asylum officer?

6 Q. Yes.

7 A. They, we call it an assessment, which is basically they
8 would set forth the facts of the case and go through the legal
9 requirements of, indicating whether in fact the applicant was,
10 did meet the eligibility criteria or did not meet the
11 eligibility criteria.

12 Q. And that's in written form?

13 A. Yes, it is.

14 Q. And then that gets passed up to a supervisor?

15 A. Yes.

16 Q. That's somebody who is below you now?

17 A. Yes.

18 Q. You once were --

19 A. Yes, I was.

20 Q. You once had all of these positions?

21 A. Yes, I did.

22 Q. And when it goes up, it's a hundred percent review of a
23 hundred percent of the data, right?

24 A. That is correct.

25 Q. The supervisor goes through everything in the file?

E3oWliu4

Caudill- Mirillo - cross

1 A. Yes.

2 Q. And including all of the notes that the hearing officer
3 took at the time, correct?

4 A. That is correct.

5 Q. To make sure that the determination was appropriate?

6 A. Yes.

7 Q. By the way, if somebody commits a fraud, right, they come
8 to immigration, they file the application, and they say it's a
9 fraud, you can deny it like that? Right?

10 A. If they actually come to us and tell us, yes.

11 Q. And if you learn later it was a fraud, you can also reopen
12 the case, right?

13 A. Yes. We --

14 Q. And you can terminate their asylum?

15 A. Yes, we can do that.

16 Q. Because if it's determined to be a fraud, the United States
17 Government isn't going to allow it to stand, right?

18 A. That's correct.

19 Q. And you terminate, right?

20 A. Yes. It's not as fast as that, but, yes.

21 Q. And what happens is that the person who filed the
22 fraudulent application can be subject to criminal prosecution,
23 right?

24 A. They can, yes.

25 Q. And if they're not in the country legally, they get

E3oWliu4

Caudill- Mirillo - cross

1 referred back to an immigration judge for removal proceedings?

2 A. Yes.

3 Q. Which is basically a formal way of saying that the
4 government's going to kick them out of the country?

5 A. It -- yes. The government's seeking the removal of the
6 individual, yes.

7 Q. Right. Kicking them back to China, right?

8 A. I wouldn't put it that way, but, yes.

9 Q. Removing --

10 A. Seeking to have them removed, yes, from the country.

11 Q. And they go back to the country of origin, right?

12 A. Presumably, unless they have some type of ability, if
13 another country will accept them. That does happen from time
14 to time.

15 Q. But generally speaking, if a Chinese national gets smuggled
16 into the United States and they're caught committing a fraud,
17 they will be deported back to China?

18 A. Yes. That's the regular course, yes.

19 Q. And the country of China, are they sympathetic to people
20 who are returned to their country after filing a false
21 application to try to stay out of their country?

22 MR. BOONE: Objection.

23 THE COURT: Sustained.

24 BY MR. FRANZ:

25 Q. Are the people afraid of going back to China?

E3oWliu4

Caudill- Mirillo - cross

1 A. The --

2 MR. BOONE: Objection. Calls for --

3 BY MR. FRANZ:

4 Q. Based on your experience of being involved in all of these
5 interviews and reviewing documentation and data, are the
6 applicants generally fearful of returning back to China?

7 THE COURT: You may answer.

8 A. I, I just want to clarify. Do you mean the person who's
9 filed fraudulently or anyone generally?

10 Q. I mean generally speaking. If a Chinese national comes in
11 and they make an application and they say they are in fear of
12 persecution by the Chinese government, generally speaking, are
13 those people afraid of returning back to China?

14 A. Yes. They, they, they say that they are.

15 Q. Now, with regard to the interview by the hearing officer, I
16 think it's fair to say that credibility is the most important
17 thing to assess, right?

18 A. Yes.

19 Q. And the hearing officers, they interview people for a
20 living, right?

21 A. Yes.

22 Q. They're like professional jurors to a certain extent?

23 A. Sure. Yes.

24 Q. They do it every day?

25 A. Sure. Yes.

E3oWliu4

Caudill- Mirillo - cross

1 Q. And they're like judge, jury, and attorney during that
2 interview?

3 A. Somewhat, yes.

4 Q. And there's no other judge in the room, right?

5 A. That's correct.

6 Q. And a lot of the times at the interviews, lawyers aren't
7 even there?

8 A. Yes. Because if they, in that case they would have chosen
9 not to come.

10 Q. So you have an applicant, let's say, from China?

11 A. Yes.

12 Q. May not be very educated, with their translator in the room
13 with the hearing officer, right?

14 A. Yes.

15 Q. The hearing officer has nobody overseeing them at the time?

16 A. No one else, in our staff, is in the room, no.

17 Q. And the purpose of the interview is for them to probe the
18 applicant or their witnesses to determine if the claim is
19 credible and if the testimony is credible, correct?

20 A. Yes.

21 Q. And they will ask whatever questions they deem appropriate
22 to do so?

23 A. Yes. Whatever questions they think are appropriate, yes.

24 Q. By the way, with regard to Christianity, you don't test
25 people to see whether or not they are actually Christian,

E3oWliu4

Caudill- Mirillo - cross

1 right?

2 A. I'm not sure how that would occur, but, no, we're not, we
3 don't generally administer quizzes on religious knowledge. No.

4 Q. That's right. It's not a quiz for religious knowledge;
5 it's really to determine whether or not they have a credible
6 belief in Christianity?

7 A. Yes.

8 Q. Right?

9 A. That's correct.

10 Q. So during the interview, it's the asylum officer who asks
11 the questions, right?

12 A. Yes.

13 Q. There's nobody there objecting?

14 A. No.

15 Q. And the witness has to answer the questions?

16 A. They can refuse to answer. However, that might be taken
17 into consideration as part of the ultimate decision because it
18 is the applicant's burden to establish that they're eligible.

19 Q. You think that just might be taken into consideration if
20 they refuse to answer questions?

21 A. Well, I would hope so.

22 Q. When you were a hearing officer, if somebody refused to
23 answer your questions, would you consider that in making a
24 determination?

25 A. Certainly would, yes.

E3oWliu4

Caudill- Mirillo - cross

1 Q. Do you train your staff at times?

2 A. Do I personally train my staff?

3 Q. Yes.

4 A. No, I don't personally train my staff.

5 Q. Are you aware of anybody in your office that says I don't
6 care if they answer my questions or not, it won't factor into
7 my decision?

8 A. I'm certainly not aware of anyone, no.

9 Q. So while you're carefully observing the applicant and the
10 interpreter, you're making sure there's no coaching, there's no
11 cheating, right?

12 A. Yes. That's what the system is designed to do, yes.

13 Q. And most of the times, the reason that an application is
14 denied is for lack of details, right?

15 A. I would say most of the time it's either denied on some
16 type of credibility, often lack of detail being part of it, or
17 failure to comply with the one-year filing deadline, yes.

18 Q. With regard to the one-year filing, there are exceptions to
19 that, right?

20 A. Yes, there are.

21 Q. Somebody could have been in jail and they couldn't have
22 filed at the time?

23 A. Yes.

24 Q. They could have been sick?

25 A. Yes.

E3oWliu4

Caudill- Mirillo - cross

1 Q. There are a number of reasons why somebody may not be able
2 to file within one year of arrival in the United States and
3 those are recognized exceptions, correct?

4 A. Definitely, yes.

5 Q. By the way, you worked in the Queens office, right,
6 Rosedale?

7 A. Yes.

8 Q. I think you listed about 12 counties that you supervise?

9 A. Yes. We have jurisdiction over those counties, yes.

10 Q. If somebody files an application and it turns out they
11 didn't live in one of those counties, they're filing in the
12 wrong place, right?

13 A. Yes.

14 Q. But that application, that's not a fraud, it can just be
15 transferred to another jurisdiction?

16 A. Yes.

17 Q. And there are procedures in place for that, right?

18 A. Yes.

19 Q. Because that happens from time to time?

20 A. Of course.

21 Q. People make mistakes?

22 A. Yes.

23 Q. They file in the wrong courts?

24 A. Yes.

25 Q. They relocate and they move?

E3oWliu4

Caudill- Mirillo - cross

1 A. Yes, all of --

2 Q. And that court might lose jurisdiction over them?

3 A. That is true.

4 Q. It gets transferred, that's not a fraud?

5 A. No. If they just happen to move, no.

6 Q. Or they just, they listed their real address and they filed
7 in the wrong place by accident, that could happen, right?

8 A. I mean, if it was an accident, yes, of course, then I would
9 say that's not fraud. I guess if there was evidence it's
10 intentional, it could be. I'm not sure.

11 Q. You said earlier that some lies are okay, that it may not
12 cause an applicant to be denied, right?

13 A. I wouldn't say they're okay, but they may not have a
14 bearing on their legal eligibility.

15 Q. So they won't have an impact on the application process?

16 A. That's true, yes.

17 Q. And that's why the person's there?

18 A. Yes.

19 Q. If they lie to you, but it's not really right on point for
20 what the interview's about, you can forgive it?

21 A. Yes.

22 Q. So it doesn't matter. As an asylum officer, you're sitting
23 there and somebody just lies to your face, you're okay with it
24 as long as it doesn't go to the credibility of their claim, is
25 that the position?

E3oWliu4

Caudill- Mirillo - cross

1 A. People lie for a variety of reasons. If it's truly
2 irrelevant to the legal requirements under the law, then, no,
3 there's, it's disregarded.

4 Q. So people lie for a variety of reasons?

5 A. Yes, some of which could be nefarious and some of which
6 could be just embarrassment. There's a lot of reasons people
7 may lie.

8 Q. These applicants, according to you, some of them at least
9 lie to asylum officers, right?

10 A. That's true.

11 Q. They've lied to the government?

12 A. That's true.

13 Q. They've lied to paralegals and lawyers?

14 A. I, I, I would presume people lie to a variety of
15 individuals. I don't know.

16 Q. They lie to get into this country, perhaps?

17 A. Perhaps.

18 Q. Let's just say they've been lying in order to pursue their
19 claim for asylum, some of them, right?

20 A. Certainly some may, yes.

21 Q. And they're desperate, right?

22 A. Yes.

23 Q. They're fleeing a country that they don't want to go back
24 to and they're willing to do whatever it takes to stay here,
25 right?

E3oWliu4

Caudill- Mirillo - cross

1 A. Yes.

2 Q. And that's because they don't want to go back to China,
3 right?

4 A. Yes.

5 Q. But they swear an oath to tell the truth?

6 A. Yes.

7 Q. I think we're at six occasions, right?

8 A. I think so, yes.

9 Q. They subject themselves to going to prison, right?

10 A. Yes.

11 Q. But they still do it even though they're warned, right?

12 A. Yes.

13 Q. And they're told if we catch you, if it's fraudulent, if
14 you lie, if it's fake, you'll be barred from ever applying
15 again, right?

16 A. Yes.

17 Q. Lin Chen is a witness that may testify in this court that
18 you testified you reviewed her, you're aware of her status,
19 correct?

20 A. I am aware of her status.

21 Q. She's on fraud hold right now, right?

22 A. Yes.

23 Q. That's because she committed a fraud, right?

24 A. It's because she's suspected. She has not, in fact, come
25 to the immigration officials and acknowledged a fraud, but it,

E3oWliu4

Caudill- Mirillo - cross

1 yes, we have very good reason to suspect that she has committed
2 fraud.

3 Q. Good reason to suspect because she's a cooperating witness
4 who's admitted to engaging in the fraud to these people from
5 the government that you're working hand in hand with, is that
6 the good reason to suspect it?

7 A. I'm personally, yes, I understand that to be the case,
8 though I'm not exactly sure what role she's playing with
9 cooperating or not. I don't know that.

10 Q. But you're aware she's a cooperator, yes?

11 A. Yes.

12 Q. You're aware that she admitted she engaged in a fraud?

13 A. Yes.

14 Q. So her application's on fraud hold, right?

15 A. That's correct.

16 Q. And when you commit a fraud against the government, your
17 asylum application can be terminated, right?

18 A. Well, the status can be terminated. She does not currently
19 have asylum status at this point in time because she's on hold.

20 Q. When you don't have asylum status, you can be deported?

21 A. We do not have the authority to do that. It would have to
22 go to an immigration judge and they would have a separate
23 hearing to make that determination. That's not something my
24 agency can do.

25 Q. But that can happen while she's on hold, right?

E3oWliu4

Caudill- Mirillo - cross

1 A. That is correct.

2 Q. And she's on a hold at the request of Special Agent Dan
3 Park for the government because she's cooperating; that's why
4 no action's been taken, correct?

5 A. Yes, that's correct.

6 Q. So she's still in this country with no proceedings to send
7 her out of this country at the request of the government,
8 correct?

9 A. She -- yes. She's --

10 Q. Thank you.

11 A. -- in a.

12 THE WITNESS: May I finish my answer.

13 THE COURT: You can finish your answer.

14 THE WITNESS: Thank you.

15 A. Her case is one of thousands of cases that are on have
16 various stages of hold. We aren't moving on any cases at this
17 time because it has to be handled on a national level and it's
18 being run out of our headquarters, so we actually cannot take
19 action on her case until all cases have been reviewed and
20 vetted and they decide how to proceed as a whole.

21 Q. That's what's been decided as a whole, right?

22 A. Yes. On a national level, yes.

23 Q. But on a national level, you have thousands of applications
24 that you're reviewing for possible fraud, right?

25 A. That's correct.

E3oWliu4

Caudill- Mirillo - cross

1 Q. You haven't investigated them yet?

2 A. We are -- typically, we don't take the action until there
3 have been convictions and at -- once all the convictions have
4 been taken and we can verify all of the evidence, then our
5 agency will begin initiating procedures.

6 Q. So those thousands of applications, those are all
7 proceeding in criminal courtrooms around the country?

8 A. No, no, no. Thousands of asylum applications that are in
9 various stages.

10 Q. So you haven't proven them to be false yet?

11 A. That's true.

12 Q. Lin Chen admitted hers was?

13 A. Unfortunately, that's not enough. We actually have to call
14 her in front of us like all of the other applicants that we
15 would need to call and have an individual hearing. That's the
16 way the regulations and the law's set up, so we can't just take
17 the testimony alone and make a decision. We still would need
18 to give her an opportunity to come and speak to us and
19 acknowledge that on the record.

20 Q. And the reason it hasn't been done --

21 A. Is --

22 Q. -- is because Special Agent Dan Park put in that request,
23 did he not, to put the proceedings against Lin Chen on hold?

24 A. No. No cases -- the decision was, we have not taken action
25 on her case because we've taken action on no cases nationally.

E3oWliu4

Caudill- Mirillo - cross

1 Q. Are you saying that Special Agent Park didn't make that
2 request?

3 A. He asked for her case to be placed on hold, but he hasn't,
4 his request for hold is something in the past. Our decision in
5 terms of how we move forward is irrelevant to his request.

6 Q. He made a request to put her on hold?

7 A. Yes.

8 Q. Right?

9 A. Yes.

10 Q. She remains on hold, right?

11 A. Through, through the conviction process for any cases that
12 are involved, yes.

13 Q. Has the government asked you to put on hold the removal
14 proceedings for people that aren't cooperating with the
15 government?

16 A. I'm not aware of any, no.

17 Q. Right. So what you're doing is you're investigating to see
18 whether or not fraud was, fraud occurred in thousands of
19 applications, right?

20 A. Yes.

21 Q. But you haven't come to the conclusion of the
22 investigation?

23 A. No.

24 Q. Lin Chen's admitted her guilt, but you're still not doing
25 anything with it?

E3oWliu4

Caudill- Mirillo - cross

1 A. Again, we don't move on any case --

2 Q. It's a yes or no.

3 A. It's a no. I think I explained why. Thank you.

4 Q. Now, with regard to the applicants that came in, they swore
5 the oath and they continued to lie and fool your officers,
6 right?

7 A. Yes. It's happened, yes.

8 Q. And some of these people, as we said, are unsophisticated
9 and uneducated, and they still fooled your officers?

10 A. Yes, it's possible.

11 Q. And they did so because they didn't want to be deported?

12 A. I would assume so, yes.

13 Q. And they did so because they wanted to stay in America?

14 A. Yes.

15 Q. And they did so because they wanted to live free, correct?

16 A. I don't know their motivation.

17 MR. BOONE: Objection.

18 THE COURT: Was there an objection?

19 MR. BOONE: I'm not sure what he means by live free.

20 THE COURT: Sustained.

21 BY MR. FRANZ:

22 Q. They didn't want to go to prison, right?

23 A. I don't know why they, why they didn't -- I don't
24 understand. I guess I'm not understanding your question.

25 Q. Well, one, people came in, according to you, and they lied

E3oWliu4

Caudill- Mirillo - cross

1 to your officers, right?

2 A. Yes.

3 Q. If they went in and told your officer, Hey, my
4 application's a fraud, I lied to you, right, they could go to
5 prison for making that admission, right?

6 A. Yes, they could.

7 Q. So they continue with their lie to avoid making that
8 admission?

9 A. Oh, yes.

10 Q. So they don't want to go to prison, right?

11 A. Yes. I'm sorry.

12 Q. They don't want to be deported.

13 A. I thought you were speaking in China. Sorry. Yes. That's
14 the case. Yes.

15 MR. FRANZ: Thank you.

16 THE COURT: Is there any other cross-examination?

17 MR. MAHER: Yes. May I have a moment to set up.

18 THE COURT: Yes.

19 MR. MAHER: Thank you.

20 MR. FRANZ: Your Honor, could I ask a couple of
21 follow-up real quick?

22 THE COURT: Yes.

23 BY MR. FRANZ:

24 Q. With regard to the database search with regard to the
25 number of applications that were filed --

E3oWliu4

Caudill- Mirillo - cross

1 A. Yes.

2 Q. Who has -- do you have access to the database?

3 A. I have access to the database, yes.

4 Q. Would you give us a printout of all of the cases that you
5 claim were filed on our behalf that compile the 900
6 applications so we can look at it?

7 A. I would personally have no problem with that. I don't know
8 if there's any --

9 MR. BOONE: Objection.

10 A. -- proprietary restrictions on that regulatory, regulatory
11 or statutory-wise.

12 Q. Well, you provided us with a number based on data --

13 MR. BOONE: Objection.

14 BY MR. FRANZ:

15 Q. -- that you say you reviewed?

16 THE COURT: Let's just hold on for a second.

17 Are these public documents?

18 THE WITNESS: No.

19 THE COURT: And for you to figure out if those are
20 documents you could turn over, what would that entail?

21 THE WITNESS: I would need to speak with our agency
22 attorneys related to public information, technology, security,
23 and also the asylum division attorneys for confidentiality
24 reasons. But certainly I could ask.

25 THE COURT: You may proceed, Mr. Franz.

E3oWliu4

Caudill- Mirillo - cross

1 BY MR. FRANZ:

2 Q. If you were to redact the names of the applications, we'd
3 be able to see at least the ones that you claim are from
4 signed, is that right?

5 A. Yes. I would believe so. It should show, yes.

6 MR. FRANZ: We'll take this up later, your Honor.

7 THE COURT: Okay.

8 MR. MAHER: Your Honor, we're going to need the
9 courtroom deputy.

10 THE COURT: She'll be right back.

11 MR. MAHER: May I proceed.

12 THE COURT: You may.

13 CROSS-EXAMINATION

14 BY MR. MAHER:

15 Q. You have never met Vanessa Bandrich?

16 A. No, I have not.

17 Q. You've never seen Vanessa Bandrich at the Rosedale office?

18 A. No, I have not.

19 Q. And you don't have any records of her appearing at any of
20 these asylum interviews, right?

21 A. I'm not aware of them.

22 Q. And, again, your office does keep track of who appears at
23 the interviews?

24 A. Yes, we do.

25 Q. You're aware that a number of cases were filed either

E3oWliu4

Caudill-Mirillo - cross

1 through the asylum office or in immigration court from the
2 Bandrich & Associates firm, correct?

3 A. Yes. I am aware of that, yes.

4 Q. But you just testified earlier that you thought there was
5 408 or something, correct?

6 A. Yes. I'm definitely aware of our office. I would presume
7 that there are filings in the immigration court, but I don't
8 know that information specifically.

9 Q. Just like you answered Mr. Franz, you did not review those
10 documents yourself in regard to Bandrich & Associates?

11 A. That is correct.

12 Q. That's not based on your personal knowledge?

13 A. No, it is not.

14 Q. You also know that there is something that's called an E28
15 form, right?

16 A. A G28?

17 Q. E28 and there's a G28.

18 A. Yes.

19 Q. It's a notice of appearance, right?

20 A. Yes, we use the G28.

21 Q. What this is is a simple form when an attorney shows up at
22 immigration proceeding, they fill out the form saying they're
23 here, right?

24 A. Yes.

25 Q. And the court or the officer makes sure that's filed before

E3oWliu4

Caudill-Mirillo - cross

1 the lawyer can speak?

2 A. That's correct.

3 Q. And these notices also have to be filed if an attorney
4 covers a case, say, for a colleague?

5 A. That's correct.

6 Q. So they might not even be appearing on their own case, but
7 that form will show up in the file, right?

8 A. Well, the form, they will have both copies of the form, but
9 the normal attorney of record will remain the attorney of
10 record.

11 Q. Right. But you're also going to have a record of the G28
12 for the attorney who came just to cover the case?

13 A. Yes, that's correct.

14 Q. And that form is called a notice of appearance, right?

15 A. Yes, that's correct.

16 Q. To this day, you're not aware of any former Bandrich &
17 Associate client whose asylum has been terminated because of
18 suspected fraud, right?

19 A. I'm not aware of any, no.

20 Q. Zero?

21 A. No.

22 Q. I want to, if we can, summarize the process of the asylum
23 office. I know you talked a little bit about it, but I want to
24 really boil this down and I think we're going to do this
25 quickly.

E3oWliu4

Caudill-Mirillo - cross

1 A. Okay.

2 Q. Basically for an undocumented person, there's a number of
3 ways they can get into the country, right?

4 A. Yes.

5 Q. And asylum is one of these ways?

6 A. That's not how they get into the country.

7 Q. To stay in the country?

8 A. Yes.

9 Q. On one hand, we can think of citizenship as something
10 probably everyone wants?

11 A. I would think so, yes.

12 Q. And asylum isn't quite citizenship?

13 A. No, it is not.

14 Q. But it's a way to stay in the country?

15 A. That is correct.

16 Q. Now, when someone wants to do this, they have to start
17 with --

18 JUROR: Are we supposed to be able to see this,
19 because we can't?

20 MR. MAHER: How's this?

21 JUROR: We have black screens.

22 THE COURT: Jurors raise your hand if you cannot see
23 any writing. All right. There's a consensus. Just a second,
24 please.

25 MR. MAHER: We'll work on that.

E3oWliu4

Caudill-Mirillo - cross

1 THE COURT: Now can you see it?

2 JUROR: Yes. It's blurry.

3 BY MR. MAHER:

4 Q. This is a very blurry picture, but it says I589. That's
5 how you start the process for asylum?

6 A. Yes.

7 Q. Once that form is filed, it goes to the service center,
8 correct?

9 A. Yes.

10 Q. And that's when the 589 is reviewed?

11 A. Yes.

12 Q. And then if it looks like it's in order, it's assigned to
13 an asylum office?

14 A. Yes.

15 Q. Rosedale is one of the eight asylum offices in the country?

16 A. Yes.

17 Q. And that's the office that you work at?

18 A. Yes.

19 Q. From service center it's going to go to the asylum office.
20 The asylum office then will send out an interview notice?

21 A. Yes.

22 Q. Right? And if the applicant has someone prepare this form
23 for them, the notice goes to the person who prepared the form,
24 right?

25 A. A copy of it, yes.

E3oWliu4

Caudill-Mirillo - cross

1 Q. They're notified?

2 A. Yes, both people, both parties would be notified.

3 Q. Then we have our interview notice. I'm trying to use my
4 best handwriting. Can everyone see the screen still?

5 Now, the interview notice is for the applicant then to
6 come for the asylum interview?

7 A. Yes.

8 Q. Right. So that's the next phase, interview notice, then
9 asylum interview?

10 A. Yes.

11 (Continued on next page)

E3o0liu5

Caudill-Mirillo - cross

1 BY MR. MAHER:

2 Q. Now, at this interview, that's where the applicant is
3 allowed to bring a translator?

4 A. Yes.

5 Q. You don't provide a translator?

6 A. No.

7 Q. They have to bring their own?

8 A. Yes.

9 Q. You can imagine that many people might need help finding a
10 translator?

11 A. Yes.

12 Q. And there is nothing wrong with bringing a translator?

13 A. Absolutely not.

14 Q. This interview is not adversarial?

15 A. No, it is not.

16 Q. Typically it's the assylum officer.

17 A. Yes.

18 Q. The applicant.

19 A. Yes.

20 Q. And a translator, if one is there.

21 A. Yes.

22 Q. Usually the lawyers aren't even there, correct?

23 A. Often, yes, that's the case.

24 Q. Often they are not there?

25 A. Often they are not there.

E3o0liu5

Caudill-Mirillo - cross

1 Q. And the government doesn't have a lawyer there?

2 A. No, there is no lawyer for the government.

3 Q. No lawyer from the government saying don't believe this
4 person, it is just one-on-one, officer and applicant.

5 A. Yes.

6 Q. So at that point -- put this down a little bit -- the
7 assylum officer can make an assessment and say this person
8 deserves assylum?

9 A. Yes.

10 Q. And if that's approved by the supervisor, those channels,
11 assylum, can be granted right then?

12 A. Yes.

13 Q. Right. So this is, I'm going to say, granted; they get
14 assylum, right?

15 A. Yes.

16 Q. That doesn't happen in the majority of cases?

17 A. No.

18 Q. It's way less than the majority of cases --

19 A. Yes.

20 Q. -- right?

21 A. That is correct.

22 Q. So it happens, if it's not granted, it's denied?

23 A. It will -- well, it can either be denied or referred to
24 court.

25 Q. Let's put it this way, they are not granted, they are

E3o0liu5

Caudill-Mirillo - cross

1 likely going to be referred. And by referred, we mean to
2 removal proceedings, correct?

3 A. Yes; that's correct.

4 Q. Okay. So removal proceedings, that's another pipeline,
5 now, correct --

6 A. Yes, it is.

7 Q. -- so to speak?

8 So people can come to removal proceedings in different
9 ways.

10 A. That is correct.

11 Q. One, is if they have had an asylum application denied;
12 right?

13 A. Yes.

14 Q. Now, in this first line, on the left, the green line, that
15 is called affirmative assylum; correct?

16 A. Yes, that's correct.

17 Q. And basically means a person is taking the steps saying,
18 here I am, I want assylum --

19 A. Yes.

20 Q. -- right?

21 Now, on the red side, over here, this is what your
22 office is gonna call defensive assylum.

23 A. Yes.

24 Q. That means now the person is being put into removal or
25 deportation proceedings, and they are allowed, as a defense, to

E3o0liu5

Caudill-Mirillo - cross

1 say don't kick me out, I deserve assylum --

2 A. Yes; that's correct.

3 Q. -- right? And that's called defensive, most likely because
4 the government is trying to remove them?

5 A. Yes.

6 Q. All right.

7 Other people get placed in removal proceedings, as
8 well, correct.

9 A. Yes.

10 Q. For instance, someone who is apprehended trying to cross
11 our border without the proper papers can be arrested?

12 A. Yes.

13 Q. They are detained.

14 A. Yes.

15 Q. And they are placed immediately into removal proceedings?

16 A. Yes.

17 Q. And those people, if they hire one, can have a lawyer
18 represent them?

19 A. That's correct.

20 Q. But they are in the same proceeding now as the person who
21 tried to get assylum, but lost.

22 A. Yes; that's correct.

23 Q. And people who are lawyers, who handle immigration cases,
24 may handle removal proceedings for both types of people?

25 A. Absolutely. That's correct.

E3o0liu5

Caudill-Mirillo - cross

1 Q. And it's probably very common for people who specialize in
2 immigration law to handle both types of assylum cases?

3 A. Yes.

4 Q. So with removal proceedings, the very first step is --
5 lawyers love jargon. You are familiar with NTA, right?

6 A. Yes.

7 Q. That means Notice to Appear, correct?

8 A. Yes.

9 Q. And so what happens is the government knows that the person
10 is in removal proceedings, so they send out a notice to that
11 person that they are required to appear in immigration court.

12 A. Yes.

13 Q. And if there is an attorney, they are also notified to
14 appear in immigration court?

15 A. Yes.

16 Q. This is not voluntary for the applicant, correct?

17 A. That is correct.

18 Q. If they do not show up to the immigration court that, in
19 and of itself, is a basis for removal?

20 A. Yes.

21 Q. For deportation.

22 A. Yes.

23 Q. And potentially inadmissibility?

24 A. Yes.

25 Q. And the term inadmissibility means you are not allowed to

E3o0liu5

Caudill-Mirillo - cross

1 come back in our borders, right?

2 A. Yes. It technically means you are not permitted to enter,
3 even. It's kind of a legal term of art, yes.

4 Q. It means you are not to be admitted.

5 A. Yes.

6 Q. And that violating that is a federal crime in and of
7 itself?

8 A. Yes.

9 Q. So after the NTA, the next step is immigration court,
10 correct?

11 A. Yes.

12 Q. So the notice to appear is to go to immigration court, yes?

13 A. Yes.

14 Q. And for people in Queens and the counties that are handled
15 by your Rosedale office, that means 26 Federal Plaza, usually,
16 right?

17 A. Yes.

18 Q. That's about two blocks away from here?

19 A. Yes.

20 Q. Now, immigration court, the first time you show up, there
21 is something called a master hearing?

22 A. Yes.

23 Q. Right. So the first step is master hearing. That's
24 basically the first time the parties show up?

25 A. Yes.

E3o0liu5

Caudill-Mirillo - cross

1 Q. And the immigration judge -- there is an immigration judge
2 there, right?

3 A. Yes.

4 Q. And the judge verifies with the parties that that's the
5 right person who is there?

6 A. Yes.

7 Q. That that's the attorney handling the case?

8 A. Yes.

9 Q. And the charges are given to the person, correct?

10 A. Yes.

11 Q. Basically, there is maybe a set of four charges where the
12 person either has to admit or deny?

13 A. Yes, I believe so.

14 Q. And if you admitted all of the charges at that first master
15 hearing, you would be deported?

16 A. To be honest, I have never worked in immigration court.
17 And I have never worked for that agency, so I'm not exactly
18 sure how -- what number of charges you would have to admit to
19 be removable. I really can't answer that question.

20 Q. But, again, this is an adversarial proceeding now --

21 A. Yes, it is.

22 Q. -- right? There is a government lawyer who is like a
23 prosecutor.

24 A. Yes.

25 Q. There may be an immigration lawyer for the person?

E3o0liu5

Caudill-Mirillo - cross

1 A. Yes.

2 Q. There may not be.

3 A. That's true, yes.

4 Q. Many people in immigration court go without counsel, don't
5 they?

6 A. I, again, I don't know. I have never worked in immigration
7 court. And I don't work in that agency, so I don't know what
8 their representation rates are.

9 Q. You have -- you're a deputy director at the assylum office?

10 A. Yes.

11 Q. And you are telling us, you are testifying that you don't
12 know that there are tremendous numbers of people in immigration
13 court who are without counsel?

14 A. I know that there are. I don't know exactly what the
15 percentage is, no. We don't share that type of data,
16 interagency.

17 Q. You're a lawyer?

18 A. Yes.

19 Q. You went to law school?

20 A. Yes.

21 Q. You have heard of the sixth amendment?

22 A. Yes.

23 Q. You have heard about the six amendment right to counsel?

24 A. Yes.

25 Q. Does the sixth amendment right to counsel apply to

E3o0liu5

Caudill-Mirillo - cross

1 immigration proceedings?

2 MR. FISCHETTI: Objection.

3 THE COURT: Overruled.

4 Do you know the answer to that question?

5 THE WITNESS: To be honest? No, I never practice. I
6 never chose to practice any type of law, I immediately went
7 into my job, so I -- it's been a long time since I took the
8 bar. I couldn't say off the top of my head.

9 Q. You're saying deputy directors of the assylum office under
10 USCIS, you don't know whether a person is entitled to have a
11 lawyer or not in immigration court?

12 A. I know they are. They have a right to have an attorney,
13 but they are not -- it's not like in a criminal context where
14 they have a right to have the government afford them an
15 attorney. That's the extent of my knowledge in terms of the
16 representation.

17 Q. Are you saying you know that they are not entitled -- by
18 entitled, I mean that if they say they want one, the government
19 has to provide one. Or are you saying you don't know whether
20 the government has to provide --

21 A. I know the government does not have to provide one.

22 Q. They don't, do they?

23 A. No. The government doesn't have to provide counsel, right.
24 Right.

25 Q. And so the logical extension of that, is if someone can't

E3o0liu5

Caudill-Mirillo - cross

1 afford a lawyer, they won't have counsel there, will they?

2 MR. BOONE: Objection.

3 THE WITNESS: Unless they are pro bono.

4 MR. BOONE: Calls for speculation.

5 THE COURT: I'm going to allow it.

6 A. Unless a pro bono organization takes their case, no.

7 Q. Right. So unless this applicant, who has come from another
8 country, who knows how to find a pro bono lawyer, unless they
9 find one, they wouldn't have one, right?

10 A. That's correct.

11 Q. You would concede --

12 THE COURT: If they can't afford one.

13 THE WITNESS: If they can't afford one, the government
14 does not provide one. If they can find a pro bono organization
15 that will accept them, then presumably -- that will accept
16 their case, then they would have an attorney. But if they
17 cannot pay for one themselves, they are not going to have an
18 attorney themselves.

19 THE COURT: You may proceed.

20 MR. MAHER: Thank you.

21 Q. Then you have a situation where you have a government
22 lawyer in an adversarial proceeding, right?

23 A. Yes.

24 Q. Who is trained in the law?

25 A. Yes.

E3o0liu5

Caudill-Mirillo - cross

1 Q. Working for Homeland Security?

2 A. Yes.

3 Q. Against a person from another country; yes?

4 A. Yes.

5 Q. No law degree.

6 A. Well, some may. But, no, certainly many don't.

7 Q. There is probably a lot of people in immigration court who
8 don't have law degrees, correct?

9 A. There are, probably.

10 Q. And there is probably even more that don't have a law
11 degree from an American law school, right?

12 A. I -- yes, I'm sure that's the case.

13 Q. Government lawyer, then, against the immigrant?

14 A. Yes.

15 Q. Correct?

16 A. That's correct.

17 Q. You would -- you do know the statistics regarding
18 immigration success rates for people who have counsel, versus
19 those who do not have counsel, correct?

20 A. Yes. They are higher, significantly higher, for people who
21 have counsel.

22 Q. People who have counsel have a significantly higher success
23 rate in the immigration court process, correct?

24 A. That's correct.

25 Q. That doesn't mean that it comes through fraud.

E3o0liu5

Caudill-Mirillo - cross

1 A. That's true.

2 Q. It comes because lawyers are good at some things, right?

3 A. That's true.

4 Q. One of the things that lawyers are supposed to be good at
5 is knowing the rules?

6 A. Yes.

7 Q. They are supposed to know what a factfinder is looking for?

8 A. Yes.

9 Q. They are supposed to know the law they are looking at.

10 A. Yes.

11 Q. And the facts that they are looking at?

12 A. Yes.

13 Q. And when they represent a client, they have that in mind?

14 A. Yes, that's correct.

15 Q. They should, at least, correct?

16 A. Yes, they should.

17 Q. Now, after the master hearing, the case is set for a trial,
18 correct?

19 A. That's correct.

20 Q. Now, just because it is set for a trial doesn't mean that
21 that's going to happen any time soon?

22 A. No, it's definitely not.

23 Q. Sometimes people can wait years for their trial?

24 A. That is correct.

25 Q. Sometimes people will show up in March of year X, and be

E3o0liu5

Caudill-Mirillo - cross

1 told we can't do your trial today, come back next March.

2 A. Yes.

3 Q. Right? They could be told --

4 A. That's my understanding.

5 Q. -- they could be told come next year, right?

6 A. That's my understanding, yes.

7 Q. And then they may come back after that year and be told
8 come back next year, correct?

9 A. Yes.

10 Q. And as these cases then pile up, the lawyers still come to
11 court for clients, right?

12 A. I -- I would presume so but, again, I don't work there, so
13 I don't know.

14 Q. Well, we would hope that if a lawyer is representing a
15 person who is going to be showing up in one of these
16 proceedings where they can be deported, that they are going to
17 show up for the court hearings, right?

18 A. I certainly hope so, yes.

19 Q. So if one is a lawyer who has a number of clients whose
20 cases keep getting put off, they might have to go to a lot of
21 court hearings?

22 MR. BOONE: Objection, your Honor. She stated several
23 times she does not work for immigration court, she cannot speak
24 with personal knowledge about what happens there, what lawyers
25 do, what is typical. He is going down a whole line of

E3o0liu5

Caudill-Mirillo - cross

1 questioning that she has said, several times, she has not any
2 basis to answer. She works in the assylum office.

3 THE COURT: I'll sustain that.

4 If there are any questions you don't know the answer
5 to, you can say that.

6 THE WITNESS: I'm --

7 THE COURT: So you don't have to answer that question.
8 So we're going -- Mr. Maher is going to ask something
9 else.

10 THE WITNESS: Okay.

11 MR. MAHER: Thank you, Judge.

12 BY MR. MAHER:

13 Q. During this trial, the immigrant can raise a number of
14 defenses?

15 A. Yes, that's true.

16 Q. And they raise these defenses in order to keep from being
17 deported; right?

18 A. Yes.

19 Q. And one of the defenses is, again, assylum?

20 A. Yes.

21 Q. Another potential defense is called withholding of removal
22 based upon an assylum claim; correct?

23 A. Yes.

24 Q. Another one could be withholding of removal based on the
25 convention against torture?

E3o0liu5

Caudill-Mirillo - cross

1 A. Yes.

2 Q. These are all different ways, potentially, to argue to an
3 immigration judge to allow you to stay in the country?

4 A. Yes.

5 Q. You would have a different status, potentially, depending
6 on the defense you raise?

7 A. That's correct.

8 Q. If you win in immigration court and you raise assylum, you
9 go back over to the left again, in the green, and you are
10 granted assylum and the benefits, right?

11 A. Yes.

12 Q. If you lose and you don't appeal, you are deported;
13 correct?

14 A. Yes.

15 Q. You can't appeal though?

16 A. Yes, you can appeal.

17 Q. You said before there is the BIA?

18 A. Yes.

19 Q. So you can appeal to the BIA. If you lose there, you can
20 appeal to, at least in this jurisdiction, to the Second Circuit
21 Court of Appeals?

22 A. That is correct.

23 Q. So you lose again, you are going to go to the Second
24 Circuit. If you lose then, your last court of relief is the
25 Supreme Court of the United States?

E3o0liu5

Caudill-Mirillo - cross

1 A. That is correct.

2 Q. There is no requirement that the Supreme Court hears the
3 appeal --

4 A. That is correct.

5 Q. -- right? The Supreme Court decides what cases they want
6 to take?

7 A. Yes.

8 Q. And they take very, very few immigration cases per year,
9 correct?

10 A. Yes.

11 Q. So, basically, if you even make it up to the Sixth Circuit
12 and lose, it is over, practically speaking?

13 A. Yes, practically speaking; yes.

14 Q. So a loss in any of these other places leads back to
15 deportation?

16 A. Yes.

17 Q. Now, as the deputy director, you know that the government
18 keeps track of the number of assylum claims made per year in
19 this country, right?

20 A. Yes.

21 Q. They also keep track of the number of claims made by
22 different country base of the person, right?

23 A. Yes.

24 Q. You testified that you are aware that at least in this area
25 of the country, immigrants from China had the largest amount of

E3o0liu5

Caudill-Mirillo - cross

1 assylum claims, correct?

2 A. Yes.

3 Q. You're also aware that the United States government keeps
4 track of, we can say, the behavior of foreign governments?

5 A. Yes.

6 Q. And in particular, keeps track of their behavior in regard
7 to human rights violations?

8 A. Yes.

9 Q. They keep track of persecution based on religion?

10 A. Yes.

11 Q. Based on gender?

12 A. Yes.

13 Q. Based on political affiliation?

14 A. Yes.

15 Q. And the government keeps track of what types of claims
16 assylum seekers are raising, right?

17 A. Yes. Yes, that's correct.

18 Q. And you have testified before that assylum officers can
19 accept country reports as part of an assylum application,
20 right?

21 A. That is correct, yes.

22 Q. And the U.S. State Department prepares country reports?

23 A. Yes, it does.

24 Q. And you are aware of that?

25 A. Yes.

E3o0liu5

Caudill-Mirillo - cross

1 Q. And in fact, the U.S. government prepares specific country
2 reports, or a specific country report, concerning China?

3 A. Yes.

4 Q. They do that every year?

5 A. Yes.

6 Q. And that is something that assylum officers are permitted
7 to look at?

8 A. Yes, definitely.

9 Q. Definitely. And as its base for knowing that there
10 actually is persecution in China, correct?

11 A. Yes. Yes, that's correct.

12 MR. MAHER: Your Honor, I have a compact disk with the
13 State Department Reports on Human Rights regarding China for
14 the years 2010 through 2013.

15 THE COURT: Why don't we -- actually, it's time to
16 take a break, in any event.

17 MR. MAHER: Sure.

18 THE COURT: So why don't we let the jury take a break
19 now. We'll take a break until 4:00. Please remember don't
20 discuss the case and keep an open mind. Thank you.

21 THE DEPUTY CLERK: All rise.

22 (Jury excused)

E3o0liu5

Caudill-Mirillo - cross

1 (In open court)

2 THE COURT: Be seated.

3 Does the government have an objection.

4 And the witness will please remain here during course
5 of -- you can have a seat just for one more minute. If anyone
6 would like to excuse the witness, let me know.

7 MR. MAHER: Yes, I think that would be proper, your
8 Honor.

9 THE COURT: You can step back. Thank you.

10 (Witness temporarily excused)

11 THE COURT: Mr. Boone.

12 MR. BOONE: Yes, your Honor.

13 Mr. Maher has been on the case since his client was
14 initially charged and presented. We have never had any
15 discussions about any CD, we don't know what is on this CD.
16 He proffers that it is some type of State Department report.
17 She does not work for the State Department. She works for the
18 assylum office. It is completely improper to, at the last
19 minute, spring this on us. It's a disk that, I presume,
20 contains many pages. Otherwise, he would have just given us
21 the pages. And, then, to have a witness who has no affiliation
22 with the State Department testify to what is in this document,
23 on what is on this disk, your Honor.

24 THE COURT: Mr. Maher.

25 MR. MAHER: Judge, this is the Human Rights Report of

E3o0liu5

Caudill-Mirillo - cross

1 the Department of State. I would ask the Court take judicial
2 notice of it. This is something that the assylum officers rely
3 upon in order to make a determination of persecution.

4 The government -- it's published by the government.
5 They are on notice. It's a website. All I have done is
6 download the public pdf document on the state department's
7 website regarding China. That is what is on this CD.

8 MR. BOONE: We don't know what is on the CD. We have
9 not seen it.

10 MR. MAHER: I'm cross-examining her. If you want to
11 go through it, and you want to verify that's what on the CD, I
12 have no problem with that. We're not going to give it to the
13 jury if it's admitted. They're not going to have the CD in the
14 back. I did that for convenience instead of killing a bunch of
15 trees right now.

16 THE COURT: Why don't you ask her if, or something to
17 this effect and then you'll tell me what your views are on
18 this. Ask her if the asylum office relies on these Department
19 of State Human Rights Reports or something. I was going to
20 look back and see exactly the way you phrased it.

21 MR. MAHER: I asked it to her two different ways.

22 THE COURT: So you said: You have testified before
23 that assylum officers, country reports -- this is a rough
24 transcript, but I'm reading from it.

25 Country reports as part of assylum application, right.

E3o0liu5

Caudill-Mirillo - cross

1 That is correct.

2 And the U.S. State Department prepares country
3 reports. Yes, it does.

4 Are you aware of that. Yes.

5 And in fact, the U.S. government prepares specific
6 country reports, or a specific country report concerning China.
7 Yes.

8 And they do take every year. Yes.

9 And that is something the assylum officers are
10 permitted to look at. Yes, definitely. Definitely.

11 And as its base for knowing that there actually is
12 persecution in China. Yes, that's correct.

13 What's the government's objection, you want to see
14 what is on the CD first?

15 MR. BOONE: Several objection.

16 First it is irrelevant. There is no question about
17 whether there is persecution in China or not. That's not the
18 issue --

19 THE COURT: I'm not going to accept the relevance
20 argument. It is one of the bases upon which someone can be
21 granted assylum. I think it is okay for the jury to see what
22 that basis is, but I'm happy to hear the rest of your
23 arguments.

24 MR. BOONE: The rest is he cannot hand our witness a
25 CD and tell her what's on it and ask her questions about it.

E3o0liu5

Caudill-Mirillo - cross

1 If there is something on the CD he wants her to see,
2 he should print it out and show it to her.

3 THE COURT: I agree with that about the form.

4 If you want to print it out and show it to her and ask
5 her if she recognizes it.

6 Are you trying, actually, get it in through her, or
7 are you just going to ask her questions about it.

8 MR. MAHER: First off, I think it is admissible, the
9 entire report on China. I'm moving to admit. I don't need
10 Burkina Faso or Ghana, I just want China. And I think that's
11 perfectly admissible. And it is also, under 901, it's
12 perfectly authenticated as well as a public record.

13 If I can just finish. As far as for efficiency
14 purposes, I am not going to read through the entire thing. I
15 have a couple of highlights I would present to her on cross.
16 But I'm not going to go through the whole thing. I think the
17 jury is entitled to have it as evidence of persecution, and the
18 basis of the claims that people are raising, and the fact that
19 this assylum officer, as an officer of the United States
20 government, relies upon this public document in making their
21 determination, which she has already acknowledged.

22 THE COURT: Okay, Mr. Boone, anything else?

23 MR. BOONE: Yes, I am a little lost as to how it is
24 not hearsay again?

25 THE COURT: Well, I'm assuming it is 8038, which would

E3o0liu5

Caudill-Mirillo - cross

1 be public record, is that the basis upon which you are trying
2 to admit it?

3 MR. MAHER: Yes. And it is self-authenticating.

4 THE COURT: Record or statement of a public office if
5 sets out the office's activities, a matter observed while under
6 a legal duty to report, but not including, in a criminal case,
7 a matter observed by law-enforcement. And then it goes on. I
8 think it would be a public record.

9 MR. BOONE: We would like an opportunity to look into
10 that.

11 THE COURT: I am going to give them the opportunity
12 look at it. So, I don't know, how much cross-examination do
13 you have left for this witness. Is she gonna be on the stand
14 tomorrow morning, or no.

15 MR. MAHER: How long are we going today?

16 THE COURT: Sorry? We are going until five, so we're
17 going from 4:00 until 5:00, so there is hour left in this day.
18 I'm trying to give the government the opportunity to review
19 this.

20 MR. MAHER: Right. It's hard for me to say. I could
21 be done before five. If I could get to that point, if we could
22 maybe stop then and, not cut off my cross. Or, we could go to
23 the next cross, and let me come back and finish tomorrow.

24 THE COURT: That's fine. I don't have an objection to
25 that.

E3o0liu5

Caudill-Mirillo - cross

1 MR. MAHER: I have no problem --

2 THE COURT: Let's move on from this issue right now.

3 To the extent that your cross is not completed, Mr. German will
4 have the --

5 MR. GERMAN: Mr. Richland.

6 THE COURT: Mr. Richland will have the opportunity to
7 do a little cross-examination.

8 The government will review the document tonight and
9 let me know if it has any objection, or what the basis of its
10 objection is tonight, or first thing in the morning.

11 MR. MAHER: And as far as --

12 THE COURT: Yes.

13 MR. MAHER: -- I brought this up earlier. As far as
14 the killing of the trees concern that I have, the problem with
15 printing out all of these hundreds of pages, when I'm just
16 going to use a couple of pages for illustrative purposes, I
17 don't think that we should really print it out. What I was
18 going to do was highlight a couple of lines in the report and
19 ask her if she agrees with it. The whole report is still in
20 evidence. I have no problem -- I prefer to give it in visual
21 form to the jury, but if we need to print it out, I will.

22 But in terms of my cross, it doesn't have to be
23 printed.

24 MR. BOONE: If I understand his point, it's that he
25 wants to see if the witness can answer as to whether or not

E3o0liu5

Caudill-Mirillo - cross

1 certain events that happened in China, it's their understanding
2 that they happened, why can't he just ask her that.

3 I mean the point of this, it seems to be, if it was in
4 a report that talks about persecution in China, have her say,
5 yes, there is persecution in China. He can ask her that
6 question.

7 THE COURT: He can ask her.

8 I'm going to, to the extent that there isn't a basis
9 upon which this is not properly admitted, I'm going to let him
10 use the document. I'm happy to hear you out on your objection
11 to it first.

12 That being said, I am not gonna let you spend too much
13 time on conditions in China. But I'll let you ask a little bit
14 about it as is relevant to being granted assylum in this
15 country. But I'm not going to allow cumulative
16 cross-examination on that issue. But I'm going to allow him to
17 ask some questions about it.

18 In terms of how much you print out, if the government
19 has a position on if you want the whole thing printed for
20 completeness, I'll have you print it for completeness. To the
21 extent I'm going to allow it, but you want to print certain
22 sections, I'm happy to hear the government out on that. If the
23 government has a position, I'll require the whole thing to be
24 printed and admitted in that form, again, to the extent that
25 there is no proper basis for keeping it out.

E3o0liu5

Caudill-Mirillo - cross

1 MR. BOONE: Yes, we would like it printed.

2 THE COURT: All right. So print it in its entirety.

3 MR. GERMAN: I would just ask, are we going to, at the
4 end of the case, be submitting printed copies, or putting
5 everything on a disk and give them a laptop.

6 MS. MERMELSTEIN: It's the government's view in hard
7 copy, everything but the recordings.

8 THE COURT: I think so, too.

9 MR. GERMAN: Okay.

10 THE COURT: So yes.

11 MR. MAHER: So I'm clear, at this point, I understood
12 your Honor to tell me to kind of move on from this topic, and
13 then we will deal with that after we hear more from the
14 government about the form that they want the reports.

15 THE COURT: That's right.

16 MR. MAHER: Okay.

17 THE COURT: If you're defining the topic as utilizing
18 the State Department report in your cross-examination, that's
19 correct.

20 MR. MAHER: Okay. But as far as continuing the cross
21 about persecution, you are not telling me to defer that until
22 the State Department --

23 THE COURT: No, you can ask questions. And I think
24 the government thinks it's perfectly proper, if I heard the
25 last comment made, for you to ask about the basis of

E3o0liu5

Caudill-Mirillo - cross

1 persecution in China that would constitute a basis for
2 obtaining assylum here.

3 MR. MAHER: Thank you.

4 THE COURT: All right. I'll see you all just in five
5 minutes.

6 MR. FISCHETTI: Maybe save a little time.

7 I have another inquiry of the Court with regard to
8 this witness. This witness said that my client, from the years
9 2007 to 2009, filed 900 assylum applications. Now, our
10 computers, as I understand it when the search took place, they
11 have the computers. My client, from what I understand from
12 talking to him, filed much less than 900 applications. The
13 only way we have of challenging the witness as to the 900
14 applications is from the data base that she said she reviewed,
15 and it had that number. I am not interested in the names, the
16 addresses or anything about the application. I just want to
17 see the data base where it says 900. But that's the only way I
18 can challenge it. I don't know if that's accurate.

19 THE COURT: Is there --

20 MR. FISCHETTI: Nothing to do with privilege or
21 anything like that. I just want to see the numbers.

22 THE COURT: Is there a form you can print out that you
23 can see the search terms and the number of responses so that
24 they can know that, for example, one assylum application was
25 not somehow counted twice, or there isn't some other reason so

E3o0liu5

Caudill-Mirillo - cross

1 they can see how that 900 figure --

2 MS. MERMELSTEIN: Can we have one moment, your Honor?

3 THE COURT: Yeah.

4 MR. KOVACS: One other answer is --

5 THE COURT: Let's just wait for the government.

6 MR. BOONE: Your Honor, first of all, I think what the
7 witness testified to was that particular law firms filed
8 certain numbers of applications, not particular individuals.

9 MR. FISCHETTI: Law firms.

10 MR. BOONE: Law firms. Wanted to make that clear.
11 Not Feng Ling Liu in particular.

12 MR. FISCHETTI: I believe said the law offices of Feng
13 Ling Liu between 2007 and 2009 filed 900 applications.

14 MR. BOONE: That's correct. So the law office --

15 THE COURT: Okay.

16 MR. BOONE: -- in terms of where those numbers come
17 from, our understanding is there is a data base that you can
18 search by putting in different search terms; lawyer names
19 addresses, things like that. We'll have to do some research on
20 our own to see if there is some sort of printout or some type
21 of something physical that we can give them that shows how
22 those numbers came to be.

23 MR. FISCHETTI: I would be happy to work it out with
24 the government. As long as the government and your Honor
25 understand my problem. She says I looked at documents. They

E3o0liu5

Caudill-Mirillo - cross

1 filed 900 applications from the Feng Ling Liu law firm. We
2 think that number is entirely inaccurate. And the only way I
3 can check it is if you give me some information so I can count
4 them. I'll work it out with the government.

5 THE COURT: I understand. Try and work it out. If
6 there is an issue, I'm happy to hear you out on it.

7 MS. MERMELSTEIN: When we produced discovery in this
8 case, we demanded reciprocal discovery. We produced the
9 exhibits and 3500 early. We are not -- I understand that the
10 government and defense counsel are not equal parties in this
11 particular regard, but on the day that defense lawyer is going
12 to offer an exhibit, I think it's fair for that to be given to
13 the government to see.

14 THE COURT: I agree with you. And it's why I'm
15 putting the cross off until tomorrow. And I'm really asking
16 all of you, if you have discovery that you are using, I mean
17 you know produce it to the government so that we can avoid any
18 delays. So I agree with that, generally.

19 In terms of, you know, the 900 figure, I mean I know
20 this is not the point that you were making, but I understand
21 their desire to get at how that number was reached. And so
22 that's a separate issue and that figure may not have been
23 produced in any fashion in discovery. I don't know if it was
24 or wasn't.

25 MR. FISCHETTI: No.

E3o0liu5

Caudill-Mirillo - cross

1 MR. MAHER: No.

2 THE COURT: I understand their desire to get more
3 information on that. I know that is not your point.

4 MS. MERMELSTEIN: The number was produced. The data
5 was not produced. This witness' 3500 indicated that she would
6 give that testimony.

7 THE COURT: Okay.

8 MR. MAHER: All.

9 MR. KOVACS: All it indicated was that she had gotten
10 an e-mail from somebody else from the department telling her
11 the numbers, which was my basis for the objection, that it was
12 not her own personal knowledge.

13 THE COURT: Right.

14 MR. KOVACS: And now we are in a position where we
15 can't, based upon the data that we have. The only challenge we
16 have is it's not 900. But how do we get to the bottom of it.

17 THE COURT: We are going to get to the bottom of it.
18 The government is going to look into if there is anything
19 printed out. If need be, we'll have the appropriate witness to
20 come in here and testify about who put the actual search terms
21 in, so that we don't have the hearsay problem that you have
22 identified. Okay.

23 MR. FISCHETTI: Thank you, Judge.

24 MR. MAHER: Thank you.

25 MR. GERMAN: Thank you.

E3o0liu5

Caudill-Mirillo - cross

1 THE COURT: Why don't we just take a one-minute
2 break --

3 Yes, Mr. German.

4 MR. GERMAN: No, no.

5 (Recess)

6 THE COURT: Are we ready?

7 MS. MERMELSTEIN: Frankly, it never occurred to us
8 that this was going to take so long today. We have two very
9 brief witnesses who are both FBI photographers whose testimony
10 are essentially that they took pictures during the search. I
11 assume there is not going to be tremendous cross, as two out of
12 three defense lawyers had been willing to stip to the
13 admissibility of those photos. So I assume they don't have a
14 lot of questions about them.

15 They have operational obligations both tomorrow and
16 the next day. There are, as I just learned, only four FBI
17 photographers in all of New York so they are heavily booked.
18 Given that we are going to have to do a weird breaking up of
19 the cross --

20 THE COURT: Do any of the lawyers have any objection
21 to taking these witnesses out of order?

22 MR. MAHER: Not my preference, I'm in the middle of my
23 cross, obviously.

24 THE COURT: Do you have a real objection to it, given
25 that we're going to change course in your cross-examination

E3o0liu5

Caudill-Mirillo - cross

1 anyway.

2 MR. MAHER: Just looking back at the clock.

3 THE COURT: It's already 4:10.

4 MR. MAHER: Right. I -- no, if your Honor wants to do
5 that. I do want your Honor to know, at least for the witness
6 who took photographs of the Bandrich & Associates law firm, I
7 might have 15 minutes or so of cross.

8 THE COURT: So what would you like to do?

9 MR. MAHER: It looks like we are discussing that the
10 government will call the photographer who took photographs at
11 the Bandrich & Associates firm.

12 I will stipulate as to the photographs for Moslemi
13 firm. But then, at that point, are we done for the day, so I
14 could --

15 THE COURT: We are done for the day at 5:00. But you
16 have two witnesses, right?

17 MS. MERMELSTEIN: We have two witnesses. If we have a
18 stipulation as to one set of photographs, we only have one
19 witness. And even with 15 minutes of cross, I think we should
20 more than be able to finish that witness today.

21 THE COURT: And if not, you had more cross anyway on
22 this witness. We'll tell this witness to wait. You'll call
23 the photographer, or if you need to call two, you'll call two.
24 And we'll try and finish them by the end of the day.

25 MS. MERMELSTEIN: If Mr. Maher says he'll stipulate,

E3o0liu5

Caudill-Mirillo - cross

1 we'll take his word for it, until we get him the stipulation.

2 THE COURT: Fine. Do that now. And can we bring the
3 jury in?

4 MR. MAHER: Can we just --

5 THE COURT: Yeah, sure, go ahead. Go ahead.

6 Mr. Maher, are we taking witnesses out of order?

7 MR. MAHER: I will do that, Judge, if I can
8 recalibrate.

9 THE COURT: Okay. Okay, let's bring the jury in.

10 THE DEPUTY CLERK: All rise.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E3o0liu5

Caudill-Mirillo - cross

1 (In open court)

2 (Jury present)

3 THE COURT: I want to apologize for keeping you
4 waiting. I assure you we're in here working to try and ensure
5 that we resolve as many issues as we can, so the trial goes as
6 quickly as it can.

7 We are going to take a witness out of order.
8 Sometimes we do that, just to accommodate someone's schedule.
9 We are going to do that, turn to a different witness. We'll
10 hear again from Ms. Caudill-Mirillo first thing in the morning,
11 okay.

12 Mr. Boone.

13 MR. BOONE: Yes. The government calls Daniel
14 Piszczatoski.

15 DANIEL PISZCZATOSKI,

16 called as a witness by the government,

17 having been duly sworn, testified as follows:

18 THE DEPUTY CLERK: State your name and spell it for
19 the record.

20 THE WITNESS: Daniel, P-i-s-z-c-z-a-t-o-s-k-i.

21 THE DEPUTY CLERK: Thank you, you may be seated.

22 THE WITNESS: Thank you.

23 THE COURT: You may proceed.

24 DIRECT EXAMINATION

25 BY MR. BOONE:

E3o0liu5

Piszczaatoski - direct

1 Q. Where do you work?

2 A. I work for the FBI in the New York office.

3 Q. Is that the Federal Bureau of Investigation?

4 A. Yes, it is, sir.

5 Q. Do you have a particular title?

6 A. I'm a photographer.

7 Q. And how long have you been a photographer with the FBI?

8 A. Exactly ten years today.

9 Q. Congratulations.

10 A. Thank you.

11 Q. Could you please describe, generally, what your duties are
12 as a photographer for the FBI.

13 A. I support any photographic needs that are required in the
14 office, from anything from a diplomate arrival, to a search, to
15 a crime scene, and some surveillances.

16 Q. You mentioned you participate in searches?

17 A. Yes, sir.

18 Q. What role do you play in searches?

19 A. I'm a photographer of the search.

20 Q. And what is it that you are photographing?

21 A. Basically, what we do, is we photograph the scene that
22 we're going to search so that we can show what it looked like
23 when we enter.

24 Q. Approximately how many searches have you participated in
25 throughout your career with the FBI?

E3o0liu5

Piszczaatoski - direct

1 A. My career? I would say I average 20 to 25 a year.

2 Q. Have you received any training on how to properly take
3 pictures during searches?

4 A. Yes, I have gone to Quantico, Virginia for photography
5 courses.

6 Q. And, first of all, what is Quantico, Virginia?

7 A. It's our training facility.

8 Q. The FBI's?

9 A. Yes, sir.

10 Q. And what types of things did you learn there in regards to
11 photography?

12 A. Well, I was already a photographer with 28 years
13 experience. They taught me the basics on how to process a
14 crime scene, or how to do a surveillance.

15 Q. Is there a particular method that is generally followed
16 when taking pictures at a search?

17 A. Yes. Well, what we do is, the search team or the arrest
18 team will enter the facility to make sure it is secured of any
19 weapons or personnel. And then what I do is I'll make entry,
20 I'll post -- say I do the front door. I'll do the overall door
21 before entering, say, an office. And then I'll photograph the
22 lock to show whether we had to breach the lock or whether
23 somebody actually opened it for us. And then I will make entry
24 into, say, the foyer or to the office or whatever we're
25 searching. And, usually, I process it with the four corners.

E3o0liu5

Piszczaatoski - direct

1 If it's not a homicide scene, I just do the four corners. So
2 if I was to do this area here, I would make entry in the door,
3 do this corner and shoot diagonally across. Then I would go to
4 that corner and shoot diagonally across, so on and so forth.
5 We get an idea of what the area that we're going into looks
6 like.

7 Q. Okay. And I want to direct your attention to
8 December 18th, 2012. Were you working that day?

9 A. Yes, sir.

10 Q. Did you have a particular assignment?

11 A. I was assigned to cover a search for investigative squad,
12 C-6.

13 Q. And for the jury, what is C-6?

14 A. Investigative squad that does, I believe, organized crime.
15 Asian organized crime.

16 Q. A squad within the FBI?

17 A. Yes, it is.

18 Q. And do you remember what type of place that you were
19 scheduled to search that day?

20 A. If I recall correctly, it was a -- it was an office down
21 the hallway, but it was above a bank. And I believe in the
22 East Broadway area.

23 Q. What area -- that is in what area of town?

24 A. Basically around the corner from me, it was in Chinatown
25 area.

E3o0liu5

Piszczaatoski - direct

1 Q. And did you know anything about what type of establishment
2 that place was?

3 A. Sometimes we do. At the time, no, we -- we get briefed.
4 Sometimes I can make the briefs. There is a safety brief and
5 they discuss what they are doing. I don't recall until I made
6 entry. It was some kind of office.

7 Q. Okay. Could you generally describe the office, the layout?

8 A. If I recall, it was sort of an open area. I -- I believe
9 there was some kind of office in the corner that was closed.
10 And I do remember a map or two on the wall.

11 Q. Okay. I want to show you what's been marked for
12 identification as government exhibit 800.

13 A. Yes, sir.

14 Q. Do you recognize that document?

15 A. I did not draw this, but it looks like the area. It shows
16 an office down in the corner that I thought I remembered, but I
17 did not draw this document.

18 Q. Is it a fairly and accurate depiction of the layout of the
19 office that you remember searching that day?

20 A. I -- I believe so.

21 MR. BOONE: Your Honor, the government offers
22 government exhibit 800 into evidence.

23 THE COURT: Any objection?

24 MR. FISCHETTI: No.

25 MR. GERMAN: No.

E3o0liu5

Piszczaatoski - direct

1 MR. MAHER: No.

2 THE COURT: It will be admitted.

3 (Government's Exhibit 800 received in evidence)

4 BY MR. BOONE:

5 Q. Now, I want to show you what's been marked for
6 identification as government exhibits 802 through 823,
7 number 825, numbers 833 through 848, and number 859.

8 MR. GERMAN: If we can have those numbers again,
9 sorry.

10 MR. BOONE: Sure. 802 through 823. Then it's 825.
11 Then it's numbers 833 through 848. And then it's number 859.

12 MR. GERMAN: Thank you.

13 THE WITNESS: Yes, sir.

14 (Continued on next page)

E3o0liu5

Piszczaatoski - direct

1
2 BY MR. BOONE:

3 Q. Do you recognize those documents?

4 A. I believe they're mine. I see the Post-it notes, as I told
5 you that we mark it off and that looked like to be in my
6 handwriting, and it is the front door, and we moved in to the
7 close, close-up of the lock and we proceeded into the area.

8 Q. Do those photographs fairly and accurately depict the
9 office you searched?

10 A. Yes.

11 Q. At the time you searched it?

12 A. Yes, they do.

13 MR. BOONE: Your Honor, the government offers
14 Government Exhibits 802 through 823, 825, 833 through 848, and
15 859 into evidence.

16 THE COURT: Any objection?

17 MR. GERMAN: No.

18 THE COURT: They'll be admitted.

19 (Government Exhibits 802-823, 825, 833-848, and 859
20 received in evidence)

21 BY MR. BOONE:

22 Q. I want to go over a few of those photos.

23 MR. BOONE: Ms. Geier, if you could, publish first
24 Government Exhibit 859.

25 A. I have 859 right here on paper.

E3oWliu6

Piszczaatoski - direct

1 Q. We're going to wait to see if we can get it on the screen.

2 This is No. 859. What is that a picture of?

3 A. Appears to be the front door of the office that we made
4 entry into.

5 Q. Okay. I'm showing now Government Exhibit 804. What is
6 that a picture of?

7 A. Well, that would be the entrance. If you look in the
8 right-hand corner, you'll see a yellow Post-it note with an A.
9 That would be an area A we were moving in. That would be the
10 first area that we went into.

11 Q. Okay. I want to show you now Government Exhibit 807. What
12 is that a picture of?

13 A. That is not very clear to me, but it looks to be an angle
14 back to the front door in area A, if, if I'm seeing it clearly
15 enough. I'd have to see the print back, if you'd want. But in
16 the center it looks like the front door is right there.

17 Q. Okay.

18 A. So, as I said, we process, we would go around and shoot
19 back on an angle, so that, if what I'm seeing here, that would
20 be the front door shooting back.

21 Q. Now I want to show you Government Exhibit 810, and to make
22 it easier for you, I'm going to give you a copy of 810.

23 A. Okay.

24 Q. What is that a picture of?

25 A. That's a photograph of area B. If you look on the

E3oWliu6

Piszczaatoski - direct

1 right-hand side, you'll see a postie that has the initial B.

2 So that would be B entry.

3 Q. Now I want to show you Government Exhibit 818. What is
4 that a picture of?

5 A. It's a little difficult to see, but it looks like area D,
6 in the Post-it note.

7 Q. And that's the Post-it note on the right-hand side of the
8 picture?

9 A. Yeah, there's a Post-it note. Sometimes I, I write on the
10 postie and then the glue's on the other side so it would have
11 to be upside down, sometimes.

12 Q. Now I want to show you Government Exhibit 840. What is
13 that a picture of?

14 A. I do not see the postie in there, unless it's in this lower
15 right-hand corner being clipped off.

16 Q. Is that one of the offices you took a picture of that day?

17 A. Yes, sir.

18 Q. Now I want to show you Government Exhibit 814. Can you see
19 that clearly?

20 A. That also looks to be area C.

21 Q. Is that also one of the offices you took a picture of that
22 day?

23 A. Yes, sir.

24 Q. Now I'm going to show you a picture of Government Exhibit
25 822. What is that a picture of?

E3oWliu6

Piszczaatoski - direct

1 A. That's a picture of a United States currency that was found
2 in one of the offices, C1.

3 Q. Was it found in a bag in one of the offices?

4 A. It would be photographed exactly where, what it was in, if
5 we possibly can do that. The fact that there's a postie that
6 says C1, it was in office C.

7 Q. I want to show you Government Exhibit 825. What is that a
8 picture of?

9 A. That appears to be American currency. It is shot in room
10 C1, or area C, I meant.

11 Q. Now I want to show you Government Exhibit 832. What is
12 that a picture of?

13 A. It's a checkbook that was found in area A. That's why it
14 would have a Post-it A1.

15 Q. Can you read, you said it's a checkbook. Can you read
16 whose checkbook it appears to belong to?

17 A. I would have to see a better photograph. It's not, the
18 resolution on this monitor's not proper. It says something
19 associates. Sandrich Associates, Incorporated.

20 Q. Let me see if I can get you a copy.

21 A. Maybe a B or an S. Hopefully it's much clearer on my
22 original photograph.

23 Q. Let me just show you.

24 A. I would assume it would be. Sorry about that. Bandrich
25 Associates, Incorporated. B-A-N-D-R-I-C-H. I believe so.

E3oWliu6

Piszczaatoski - direct

1 Q. Thank you. Now I'm going to show you what's been marked
2 for identification as Government Exhibits 826 through 831. Do
3 you recognize those documents?

4 A. Those are photographs of a monitor that I would take, I
5 took at the office.

6 Q. Do those photographs fairly and accurately depict how
7 those -- when you say monitor, you're referring to a computer
8 monitor?

9 A. A computer monitor.

10 Q. Do those photographs fairly and accurately depict how those
11 monitors appeared at the time you took the pictures?

12 A. Yes, sir.

13 MR. BOONE: Your Honor, the government offers 826
14 through 831.

15 THE COURT: Any objection?

16 MR. GERMAN: No.

17 THE COURT: They'll be admitted.

18 (Government Exhibits 826-831 received in evidence)

19 MR. BOONE: If I could just take those back, thanks.

20 Q. After you finished taking photographs at the office, what
21 did you do next?

22 A. When we finalize the process of the search, we do what we
23 call exit photographs.

24 Q. What are those?

25 A. Basically, we retrace our steps from when we made entry.

E3oWliu6

Piszczaatoski - direct

1 This way we can show that, how we left the facility.

2 Q. And after you finish -- sorry.

3 A. We would basically close down, no one else enters. I
4 remove the Post-its, and then more times than not we photograph
5 the warrant, close to the last photograph, and then we back off
6 and secure the facility, or the people that are, if there are
7 personnel inside, they'll secure the facility. They'll get a
8 receipt for what was taken from the search team, and we leave.

9 Q. Prior to participating in this search, did you have any
10 involvement in the investigation of a law firm named Bandrich &
11 Associates?

12 A. No, I do not.

13 Q. After having finished taking pictures at the search you
14 just described, did you have any involvement in the
15 investigation of a law firm called Bandrich & Associates?

16 A. No, I did not.

17 MR. BOONE: No further questions, your Honor.

18 THE COURT: Cross-examination.

19 MR. MAHER: I have some. Thank you, your Honor.

20 May I inquire, Judge.

21 THE COURT: You may.

22 MR. MAHER: Just so the courtroom deputy knows, I'll
23 have to go back and forth between the Elmo and our trial tech.
24 Could we put it on the computer monitor for the defense table
25 right now, and if we can have it on clear right now, please.

E3oWliu6

Piszczechoski - direct

1 Thank you.

2 CROSS-EXAMINATION

3 BY MR. MAHER:

4 Q. You did not prepare any written reports in this case,
5 right?

6 A. No, I have not.

7 Q. Just took photographs that day?

8 A. Yes, sir.

9 Q. And that's your involvement?

10 A. Yes, sir.

11 Q. There was someone who was in charge at the scene though,
12 correct?

13 A. Yes, sir.

14 Q. Who was in charge?

15 A. I don't recall. It would be a team leader. I don't recall
16 the name.

17 Q. You don't know who the team leader was?

18 A. I don't recall the name.

19 Q. What did the team leader look like?

20 A. Don't recall.

21 Q. Was the team leader a man or a woman?

22 A. My TL, I think, was a female.

23 Q. By TL, do you mean team leader?

24 A. Team leader. Yes.

25 Q. Can you tell us anything else to describe who the team

E3oWliu6

Piszczaatoski - cross

1 leader was that day?

2 A. I believe it, I believe it was an Agent Vanessa Tibbetts.

3 Q. Did you receive any instructions before going into the
4 premises?

5 A. As per?

6 Q. From the team leader.

7 A. We, we get a safety briefing.

8 Q. Did you receive any specific instructions about what you
9 were supposed to photograph?

10 A. No, sir.

11 Q. You know though when you walk into a scene, in this type of
12 situation, you really don't know what's going to be behind the
13 door when you walk through, right?

14 A. The scene is secured before I make entry.

15 Q. I'm not talking about safety. Obviously it's been secured
16 that way, correct?

17 A. Yes.

18 Q. And you had no reason to feel that you were in any type of
19 danger at this point, right?

20 A. No, sir.

21 Q. It's a law office, correct? Correct?

22 A. It was an office.

23 Q. You knew it was a law office you were going into, right?

24 A. I do now.

25 Q. At the time --

E3oWliu6

Piszczechoski - cross

1 A. It was an office.

2 Q. If I could just finish my question.

3 Are you saying that that day you didn't know it was a law
4 office you were taking photographs of?

5 A. I don't recall. I don't recall if that was transmitted to
6 me.

7 Q. But when you, in general, go to a scene, you understand
8 once you walk through the door, you don't necessarily know
9 what's going to be behind the door, correct?

10 A. I guess you could say that, sir.

11 Q. You're not clairvoyant, right?

12 A. Right.

13 Q. And your job is to document what's at the scene?

14 A. Correct.

15 Q. Right?

16 A. Yes, sir.

17 Q. To memorialize it for the future?

18 A. Yes, sir.

19 Q. And you took photographs, yes?

20 A. Yes, sir.

21 Q. That was your role?

22 A. That's my job.

23 Q. And there were other people on the team there as well?

24 A. Yes, sir.

25 Q. There was a person there who was a specialist in computers,

E3oWliu6

Piszczaatoski - cross

1 correct?

2 A. I believe there was.

3 Q. There were other agents there as well?

4 A. Yes, sir. And I'll do it myself.

5 Q. How many agents were there total?

6 A. I don't know. I don't recall.

7 Q. Fair to say it's close to ten?

8 A. Don't recall.

9 Q. You just testified about some photographs you took of a
10 computer monitor?

11 A. Yes, sir.

12 Q. Do you recall that?

13 A. Yes.

14 Q. You don't know who had touched that computer last before
15 you took those photographs, right?

16 A. That's correct.

17 Q. If I could turn your attention to what's been marked as
18 Government Exhibit 805?

19 MR. MAHER: Could we put that up, please.

20 THE DEPUTY CLERK: You want this for the witness and
21 the jury as well?

22 MR. MAHER: For everyone. Thank you. And if we could
23 make that full size, please.

24 Q. This is Government Exhibit 805, and this is in that area
25 that you called area A, right?

E3oWliu6

Piszczatoski - cross

1 A. I don't see the Post-it, but if you're saying that --

2 Q. Well, there's the main area --

3 A. Right. Main area's area A.

4 Q. Where all the desks are kind of lined up?

5 A. Yes.

6 Q. In the open bull pit. What do you call it? Bullpen,
7 right?

8 A. Open area.

9 Q. What Mayor Bloomberg used to call it, right?

10 MR. MAHER: And so if I could ask Ms. Cavale, can I do
11 the thing where I make it red? Yes. Thank you.

12 Q. What we're going to do here is if you look at your screen,
13 I'm going to circle on my monitor something on the picture that
14 should show up on the monitor for you to look at as well.
15 Right? If all goes well here, right?

16 MR. MAHER: So, no? No.

17 THE DEPUTY CLERK: Not working?

18 MR. MAHER: No. Try one more time. No.

19 Q. Sir, I'm going to ask you, on the right side of the page
20 where it's just kind of white, can you just run your finger on
21 the screen and see if a red mark shows up. No.

22 Just one more moment. Try and see if we can get this
23 annotation working?

24 A. That's all right.

25 Q. I'm just going to have you look, if you look in the middle

E3oWliu6

Piszczaatoski - cross

1 of this picture, all right, and go straight up where the
2 ceiling meets the back wall in the corner, see there where it
3 looks like kind of a black dot.

4 MR. MAHER: Can you move the cursor up, Ms. Serrano.

5 Q. See where the arrow is pointing?

6 A. Yes, sir.

7 Q. That's a Web camera, correct?

8 A. I have no idea what that is.

9 Q. Did you notice Web cameras when you were there?

10 A. Don't recall.

11 Q. You don't recall?

12 A. No, sir.

13 Q. Were you directed to make note of where the Web cameras
14 were in the office?

15 A. Not that I recall.

16 MR. MAHER: If we could go to Government Exhibit 804,
17 on the left part of this picture, if you can move the cursor,
18 please, Ms. Serrano.

19 Q. There's a window right there. See that?

20 MR. MAHER: Keep the cursor up there pointing at the
21 window. Thank you.

22 Q. See where the cursor is on the screen?

23 A. Yes, sir.

24 Q. That's a window, right?

25 A. Looks like an opening.

E3oWliu6

Piszczatoski - cross

1 Q. Opening or -- okay. Can't see the glass there. That is to
2 an interior office, correct?

3 A. Yes, it is.

4 Q. Do you still have your Government Exhibit 800 diagram?

5 A. I do, and it's very accurate.

6 Q. Does that correlate to what is marked as office C?

7 A. Yes, sir.

8 Q. Right? And on the diagram, it says window, right?

9 A. Yes, sir.

10 Q. Now, if we could move the cursor, there's something that
11 looks like a black rectangle with a tail hanging on that
12 window, right? Do you see that?

13 A. Yes, sir.

14 Q. That's another Web camera, correct?

15 A. Don't know. If you say so. I'm not sure, sir.

16 Q. You don't know?

17 A. No, I do not know.

18 Q. But you see the black object with a wire, what appears to
19 be a wire hanging down from it, correct?

20 A. I see that.

21 Q. Okay. If we could please go to Government Exhibit 807,
22 above, this is, make sure again area A, the main floor plan
23 area, right?

24 A. Yes, sir.

25 Q. And those doors are the front doors, right?

E3oWliu6

Piszczaatoski - cross

1 A. Yes, sir.

2 Q. And if we could have the cursor pointing right above the
3 doors, please, do you see that object the cursor's pointing at?

4 A. Yes, sir.

5 Q. Appears to be another Web camera, correct?

6 A. I don't know what that is.

7 Q. You don't know what that is. Okay. If we could move to
8 808, these are the same doors, correct?

9 A. Yes, sir.

10 MR. MAHER: Point to the same object, please, Ms.
11 Serrano.

12 Q. Same object, correct.

13 A. Appears to be.

14 Q. Can you tell from that perspective whether it's a Web
15 camera, or not, or security camera?

16 A. No, I cannot.

17 Q. Can't tell. And these are the photographs you took, right?

18 A. Yes, sir.

19 Q. If we could go to Government Exhibit 809, please, and if we
20 go in the middle, a little to the right, you see there are two
21 open doors, correct? To the right of the file cabinets.

22 A. Yes, sir.

23 Q. And above the door to the left, there's an object above the
24 left side of that door, see where the arrow is pointing?

25 A. Yes, sir.

E3oWliu6

Piszczaatoski - cross

1 Q. Do you recognize that as yet another camera in the office?

2 A. I don't know what that is, sir.

3 Q. If we could go to Government Exhibit 815, please, this is a
4 picture inside of what has been described already as office C,
5 correct?

6 A. Yes, sir.

7 MR. MAHER: And if we could, I'm trying not to make
8 life difficult, could we switch back to the Elmo for a moment,
9 please.

10 Q. And again, just to remind, refresh our collective
11 recollection, this is area A, right?

12 A. Yes, sir.

13 Q. And the front doors that we were just looking at are right
14 here, right?

15 A. Yes, sir.

16 Q. Office C is this area right here, yes?

17 A. Yes, sir.

18 Q. The window we were just talking about is right there, yes?

19 A. Yes, sir.

20 Q. The file cabinets are right there, yes?

21 A. Yes, sir.

22 Q. And I showed you an object above the door a second ago
23 right around here, correct?

24 A. Point to it again, sir.

25 Q. Right about there.

E3oWliu6

Piszczechoski - cross

1 A. I would have to see the photograph.

2 MR. MAHER: Okay. Let us go back again to Government
3 Exhibit 809, please, if you could switch back. Thank you.

4 Q. Those are the two doors again of office B and C?

5 A. So you were pointing at office B?

6 Q. Right. I was pointing to both doors of office B.

7 A. That appears to be above office B.

8 Q. Correct, yes. All right. Thank you.

9 MR. MAHER: Could we go to Government Exhibit 815,
10 please.

11 Q. Again, this is room C, yes?

12 A. Yes, sir.

13 Q. And there again is the object on the window, right?

14 A. Yes, sir.

15 Q. That black object, and you don't know what that is, right?

16 A. I have no idea what that is, sir.

17 Q. There's a bag on the chair in this photograph, right?

18 A. Yes, sir.

19 Q. And that's the same bag that later pictures show having
20 cash inside of it, is that correct?

21 A. It appears to be.

22 Q. And that bag was in that chair in office C when you took
23 the photograph, right?

24 A. Appears to be.

25 Q. You didn't see anyone moving it and putting it in there,

E3oWliu6

Piszczaatoski - cross

1 right?

2 A. No, sir.

3 Q. As far as you know, it was in that office C when you all
4 arrived there?

5 A. Yes, sir.

6 MR. MAHER: If we could go to 802, please, now, what I
7 would like to do, with the court deputy's assistance, if we
8 could take this next picture, the screen just for counsel and
9 the witness, and for identification purposes if we could do a
10 split screen and place No. 11 next to it, and these are of the
11 photographs that have been previously provided to the
12 government, file No. 11 that you already have.

13 Q. So, you have the screen in front of you, I'm going to ask
14 you a couple questions. The picture on the left is Government
15 Exhibit's 802 of that front door that you testified about,
16 right?

17 A. Yes, sir.

18 Q. Picture on the right side, all right, do you recognize
19 that?

20 A. That's the door.

21 Q. On the top left, do you see any objects?

22 A. I see an exit sign and an object that's purple.

23 Q. As far as your recollection, when you took the
24 photographs --

25 MR. BOONE: Objection. He can't testify to what he's

E3oWliu6

Piszczaatoski - cross

1 taking a picture of.

2 MR. MAHER: That's not true, Judge. I'm going to ask
3 him.

4 THE COURT: Let's just hear the question.

5 MR. BOONE: This is not in evidence.

6 MR. MAHER: I'm laying the foundation.

7 THE COURT: Let's just see what the question is.

8 BY MR. MAHER:

9 Q. The photograph on the right, to your recollection, does
10 this fairly and accurately depict the front door area as you
11 saw it that day?

12 A. I believe so.

13 MR. MAHER: I move to admit what we'll call Defense
14 Exhibit 1, which is that photograph.

15 THE COURT: Any objection?

16 THE WITNESS: There is a difference on this though.
17 There's no writing on the front door.

18 MR. BOONE: It appears he's saying it does not
19 accurately reflect what he saw.

20 THE WITNESS: Right. There's no type, there's no
21 lettering on the right side of the door.

22 BY MR. MAHER:

23 Q. Except for what looks like a missing sign and maybe tape
24 marks where the sign used to be, does it fairly and accurately
25 depict the door that you looked at in that area?

E3oWliu6

Piszczaatoski - cross

1 A. It says 4D.

2 Q. So do you --

3 A. I assume --

4 Q. I'm not trying to put words in your mouth. In your
5 recollection, does it fairly and accurately depict that area?

6 A. It looks like door 4D.

7 THE COURT: Does it represent fairly and accurately
8 the door as you saw it on that day that you took pictures?

9 MR. MAHER: Without the sign.

10 THE WITNESS: The day I took the picture has the sign
11 on it.

12 THE COURT: Okay. What about the purple object? Do
13 you remember if that was there or not there?

14 THE WITNESS: I don't recall that at all.

15 MR. MAHER: Move to admit, with those caveats.

16 THE COURT: I'm going to admit it. I think his
17 testimony is clear that there were differences. I'll admit
18 Defense Exhibit 1.

19 (Defense Exhibit 1 received in evidence)

20 MR. MAHER: Thank you. If we could publish that to
21 the jury then.

22 THE COURT: Let me just ask one more question. Do you
23 know when this photograph was taken?

24 THE WITNESS: The one on the right?

25 THE COURT: Yes.

E3oWliu6

Piszczaatoski - cross

1 THE WITNESS: No, I do not.

2 THE COURT: Did you take it?

3 THE WITNESS: I would have to look at the photo log
4 and the final.

5 THE COURT: But not as far as you recall?

6 THE WITNESS: I don't know.

7 THE COURT: You don't know one way or the other?

8 THE WITNESS: No.

9 THE COURT: Okay.

10 MR. MAHER: Ms. Cavale, if we could publish both
11 pictures now to the jury.

12 Q. The exhibits, so if we could, the purple object in the
13 middle above the door to the left, to the right of the exit
14 sign, correct?

15 A. Oh, yes. Yes.

16 Q. And is it fair to say again that looks like another camera?

17 A. I don't know what that object is, sir.

18 Q. Okay.

19 A. It's purple.

20 Q. The photographs that were just admitted through you on your
21 direct testimony, were those the sum total of all the
22 photographs you took at that location on that occasion?

23 A. I don't know the count that was given to me.

24 Q. Do you know how many photographs total you took that day?

25 A. That would be registered on a photo log.

E3oWliu6

Piszczechoski - cross

1 Q. On the photo log?

2 A. Yes, sir.

3 Q. Where is that photo log?

4 A. That photo log would be forwarded with the files to the
5 case agent.

6 Q. Are the photos with the photo log, or does the photo log
7 just delineate the number of photographs that you took?

8 A. The photo log lists what photos were taken.

9 THE COURT: Mr. Maher, it's 5:00. Are you almost
10 done?

11 MR. MAHER: No.

12 THE COURT: How much longer do you have?

13 MR. MAHER: I have more to go through, Judge.

14 THE COURT: Approximately how long will it take for
15 you to finish your cross-examination?

16 MR. MAHER: Maybe 15 minutes.

17 THE COURT: I promised you all that you can leave by
18 five, so let me just ask you this. Anyone who cannot stay
19 until 5:15, can you raise your hand now, please.

20 We're going to have to excuse the jurors at this time
21 and bring the witness back another day to complete his
22 cross-examination. Okay?

23 MR. MAHER: Thank you.

24 THE COURT: All right. I'm going to thank the jury
25 for its time. I'll see you tomorrow morning. Please try and

E3oWliu6

1 be prompt at 9:30 so we can start on the dot at 10:00. Please
2 don't talk about the case. Keep an open mind and don't do any
3 research.

4 Lastly, I promised to let you know in advance about
5 Fridays. We will not be sitting this Friday. Have a nice
6 evening. Thanks.

7 (Jury excused)

8 THE COURT: You can step down.

9 (Witness excused)

10 THE COURT: Why don't you all coordinate about when
11 this witness will complete his testimony.

12 MS. MERMELSTEIN: Your Honor, we're just going to
13 inquire about scheduling. We won't talk about anything
14 substantive since he's on cross-examination.

15 THE COURT: That's fine. Does anyone have any other
16 issues they'd like to raise tonight? We have to address the
17 issue of the report in the morning.

18 MR. FRANZ: We need to know who the witnesses for
19 tomorrow will be because obviously we will need to prep.

20 MS. MERMELSTEIN: Given where we are, it's the same
21 witness list we anticipated for today.

22 THE COURT: The same. We're going slower than
23 anticipated.

24 MS. MERMELSTEIN: Same witness order as we had
25 previously told you, including the first cooperator. We won't

E3oWliu6

1 get past that, I think, for sure.

2 THE COURT: No other issues?

3 MR. MAHER: This can be totally off the record.

4 THE COURT: Okay.

5 MS. MERMELSTEIN: Your Honor, just to be clear, the
6 attempt to call this witness today to avoid the problem about
7 tomorrow, I guess, didn't quite work, but he is on operations
8 tomorrow and the next day. I gather there's basically no
9 flexibility, so we'll anticipate he'll be available to continue
10 cross-examination on Thursday. I apologize. We certainly
11 realize it's not ideal, but given his schedule, I'm not sure
12 what else we can do.

13 THE COURT: Everyone heard that? Thanks.

14 (Adjourned to March 25, 2014, at 9:30 a.m.)
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

ASHLEY CAUDILL-MIRILLO	
------------------------	--

Direct By Mr. Boone	111
-------------------------------	-----

Cross By Mr. Franz	162
------------------------------	-----

Cross By Mr. Maher	211
------------------------------	-----

DANIEL PISZCZATOSKI	
---------------------	--

Direct By Mr. Boone	250
-------------------------------	-----

Cross By Mr. Maher	262
------------------------------	-----

GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

1	121
-------------	-----

505, 507, 508, 513, 517, 518, 519, 521, 524, 525	153
--	-----

800	255
---------------	-----

802-823, 825, 833-848, and 859	256
--	-----

826-831	260
-------------------	-----

DEFENDANT EXHIBITS

Exhibit No.	Received
-------------	----------

1	274
-------------	-----